

METROPOLITAN AREA PLANNING COMMISSION

MINUTES

December 21, 2000

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held Thursday, December 21, 2000 at 1:30 p.m., in the Planning Department Conference Room, 10th floor, City Hall, 455 North Main, Wichita, Kansas. The following members were present: Chris Carraher, Chair; James Barfield, Frank Garofalo; Bud Hentzen; Bill Johnson; Richard Lopez; Ron Marnell, John W. McKay, Jr., Jerry Michaelis; George Platt; Harold Warner; and Ray Warren. Susan Osborne-Howes and Chris Anderson were not present. Staff members present were: Marvin S. Krout, Secretary; Dale Miller, Assistant Secretary; Donna Goltry, Principal Planner; Scott Knebel, Senior Planner; Barry Carroll, Associate Planner, and Karen Wolf, recording secretary.

1. Approval of meeting minutes for November 9, 2000

CARRAHER "Are there any addition or corrections to the minutes?"

PLATT "Yes. I would like to amend Page 86 to show that on Item No. 12, I abstained."

CARRAHER "Okay. Without objection, so ordered."

HENTZEN "On Page 74, about a third of the way down the page, it quotes me as saying 'in fact, regarding the school district, the citizens of Wichita approved a \$184 million bond issue'. That should actually be *\$284 million*. I don't know if I said it wrong, but it should be \$284 million."

CARRAHER "Okay. Without objection, so ordered. Are there any other additions or corrections to the minutes? With that in mind, I will yield the floor to Mr. McKay."

MOTION: That the Metropolitan Area Planning Commission approve the minutes of October 9, 2000 as amended.

MCKAY moved, **GAROFALO** seconded the motion, and it carried unanimously (11-0).

CARRAHER "Are there any items on the subdivision agenda that need to be pulled for reconsideration?"

MCKAY "I would like to comment on Item 3/1."

CARRAHER "Why don't we go ahead and take care of the subdivision items and then we will move on to the vacation items?"

MCKAY "Okay."

CARRAHER "Seeing as how there isn't a need to pull either Item 2/1 or 2/2, I would open the floor for a motion to approve the subdivision items as presented."

Subdivision Items 2/1 and 2/2 were approved subject to the Subdivision Committee recommendations. **MARNELL** moved, **LOPEZ** seconded the motion, and it carried unanimously (11-0).

2/1. DED2000-00034 - Dedication of a Utility Easement from Rhonda and Neil Widener, on property described as:

The east 2 feet of the west 10 feet of the west 100 feet of Lot 30, Third Clarkdale Subdivision, Sedgwick County, Kansas. Located east of Seneca, north of 61st Street South.

PURPOSE OF DEDICATION: This Dedication is a requirement of Lot Split No. SUB 2000-101 and is being dedicated as a requirement by City Engineering to increase the 8-foot easement to the 10-foot standard.

Planning Staff recommends that the Dedication be accepted.

2/2. DED2000-00035 - Dedication of a Utility Easement from Louis Confessori, for property described as:

The west 2.0 feet of the east 10 feet of the south 90 feet of the west 150 feet, Lot 10, Block 8, Parkwilde Addition to Wichita, Sedgwick County, Kansas. Generally located south of Central, west of West Street.

PURPOSE OF DEDICATION: This Dedication is a requirement of Lot Split No. SUB 2000-96 and is being dedicated as

a requirement by City Engineering to increase the 8-foot easement to the 10-foot standard.

Planning Staff recommends that the Dedication be accepted.

3/1. VAC2000-60 - Request to vacate a portion of the platted 25-foot utility easement, on property described as:

The south 4.00 feet of the north 30.00 feet of the west 80.00 feet of the east 105.00 feet of Lot 24, The Havens, an Addition to Wichita, Sedgwick County, Kansas. Generally located on the southwest corner of Central and Cedar Downs Circle.

The applicant is requesting to vacate a portion of the platted utility easement to expand site width for proposed home.

SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:

The Subdivision Committee recommends approval subject to the following conditions:

1. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.

BARRY CARROLL, Planning staff, "This particular case was considered on December 14, 2000. There was considerable discussion associated with this case. The Water and Sewer Department representative expressed a concern about this particular case and ultimately the Subdivision Committee voted to approve a vacation with a modified Hold Harmless Agreement. The agent was supposed to get with the staff of the Water Department and work out the terms of that prior to that meeting. As I understand it, that has not been completed. The agent is here today.

The Water and Sewer Department does not support a vacation for this particular case. They are asking for a Hold Harmless Agreement, due to the proximity of this sewer line to the house. Consequently, we are supporting that same position, not to support a vacation, but a Hold Harmless Agreement. There should not be both, as I understand it, both a vacation and a Hold Harmless Agreement. I will respond to any questions that you might have."

MICHAELIS "Mr. Carroll, maybe you can refresh my memory, and Mr. Lopez might be able to help me here, but I thought that we voted to defer that. We didn't vote to approve it with, we voted to defer it, based on the applicant working out an agreement."

CARROLL "As I understood it, we were to go forward with it, and they were trying to work the details out prior to this meeting."

MICHAELIS "I think Mr. Lopez had made a motion, and then I made a substitute motion to defer it. Unless I am way off base."

CARRAHER "Do we have Subdivision Committee minutes or anything that can clarify this issue? It seems like we are at kind of an impasse here, and I would like to be sure how to approach this."

CARROLL "As I recall, the agent had asked that we go forward to the request."

PLATT "My recollection is that we approved the vacation, subject to a Hold Harmless Agreement being worked out with the Water Department and approved by Legal. I voted against it because I felt it should have been deferred, and that the Subdivision Committee should see the Hold Harmless Agreement before it was moved forward. But my recollection was, though, that the intent of the motion was that it would not appear before the Planning Commission until that had been agreed upon."

LOPEZ "I think that is correct. We talked about the deferral and then we continued the discussion that until they had that Hold Harmless Agreement worked out, it wouldn't come back to us. I believe that is how it went. We originally went for a deferral, and then went on past that because we weren't going to get that passed."

MICHAELIS "Okay."

CARRAHER "With that in mind, and I believe a consensus reached, we will continue on with this issue. I believe, before we discussed this that Mr. Carroll was ready to stand for questions. Are there any questions for staff regarding this issue?"

MARNELL "The agreement that you referred to, has it been reached or not?"

CARROLL "As I understand it, it has not."

MARNELL "Then what is it doing here."

KROUT "The day after the Subdivision Committee, we prepare the agendas and mail them out so we put it on the agenda, assuming that it could get worked out within the next week. I guess we didn't know until today whether or not it would be worked out. So we are reporting to you that it is not worked out."

LOPEZ "Correct me if I am wrong, but I think we agreed, when we made the motion that it wouldn't come back to us for any movement until the agreement was worked out. I had asked if it was going to be on the agenda next week at the meeting, and they stated that it would be on the agenda, but if it isn't worked out, it won't be coming forward."

CARRAHER "So is the chair to assume that right now, this issue has not been worked out to where it should be presented before us at this time? The chair is at a loss here on how to approach. I am hearing to defer it."

MCKAY "Let's hear from the applicant. We have only heard from the staff. The applicant is here."

CARRAHER "That is a good idea. Would the applicant like to speak?"

PHIL MEYER "I am with the Baughman Company, agent for the applicant. I think we are asking this to be before you today because I don't think we can work out a Hold Harmless Agreement. You asked us to try to work one out. The impasse we are at, and there are two representatives from the Water and Sewer Department here and Vicky Huang from the Engineering Department, who was at the Subdivision Committee meeting is here."

The Water and Sewer Department, and I am speaking for them, so they can correct me, have changed their minds and no longer wants any of the easement vacated. They want only a Hold Harmless Agreement.

Warren arrived at 1:40 p.m.

The Subdivision Committee's motion was to vacate the easement, which is what we want, in conjunction with a Hold Harmless Agreement, in case the house is damaged. We feel that we have to have the easement vacated. We don't want that cloud on the title to follow this piece of property every time it is sold.

In my mind, and I will go into as much detail as you want, there is no reason why the vacation case shouldn't be approved. We have adequate distance from the sewer to the edge of the easement. The distance from the edge of that easement to the sewer is no different than anywhere else in town. I went back to my office and tried to figure out why you guys ever platted a 25-foot easement. It should have been a 20-foot easement. That is all we put sewers in are 20-foot easements. Once upon a time in our design, we had a storm sewer in that same easement. We do go to 25 foot when we have a storm sewer and a sanitary sewer together. Somewhere along the process, we pulled the storm sewer out of the design. They switched it to a 25-foot utility easement, rather than a 20-foot. Rather than reducing the size of it. If we would have made that change, this thing would never be in front of you and that sewer would be in the exact same location out there in the field.

We met with Engineering before ever filing the case in front of you. We had the support of the Engineering Department to do the vacation cases. We originally requested to vacate 5 foot of the utility easement. Vicky came back to me and said she couldn't support that. She said she would support 4 foot, but I can't do the extra foot, they needed the clearance for the sewer to match it like it is all over town. So we agreed with that. We were revised our footprint, pulled a foot out of the house, and proceeded on with the 4 foot vacation case for the utility easement.

Since then, and after the meeting at which there was such a debate on this, Vicky went back to Mike Lindebak, who is the City Engineer, and showed him the case and said 'here is the stance I took--here is what I did. What do you think? He also told her that he was okay with that. I called him yesterday and got permission to stand here and tell you, from him, that he is okay with the vacation case. That the way Vicky supported it when I worked it out with her was adequate to him, and he supported it.

So what I have is the two different departments in disagreement here. I would like to ask the Planning Commission today to approve the vacation case just as we presented it--as we started it. Water and Sewer is going to want to come up here to the podium and tell you that there should be no vacation at all, that it should be just a Hold Harmless Agreement. I am going to tell you that I've got adequate distance between that sewer to the edge of the easement, to maintain it, to repair it. No different than anywhere else in town. There are a lot of instances where there is this much clearance from a sewer to an edge of an easement with a structure sitting there. With that, I will answer any questions you might have. Or, I will come back up after you hear some more conversation from the city staff."

CARRAHER "I am going to have you stand for questions, Mr. Meyer."

BARFIELD "Was it your understanding that this was approved with a condition that the agreement had to be in place?"

MEYER "It was clearly my understanding that the vacation case was approved, subject to us working out a Hold Harmless Agreement that had adequate wording in it."

BARFIELD "Well, I just want to be sure that that is the same understanding that the staff had. I am asking this of Barry. Was it your understanding that it was approved with a condition that the Hold Harmless Agreement be in place?"

CARROLL "It was my understanding of the motion. That the vacation, plus I think the term was used 'modified Hold Harmless Agreement'. They were to work it out and the Law Department was to review it. If it was okay, then that was how it would be."

BARFIELD "If that was the understanding we had, I don't see how we could possibly move forward with this."

MEYER "I think the Water and Sewer Department is asking you to change your original motion that you made at the Subdivision Committee hearing. Because that motion was to support the vacation. Now they are saying 'no vacation at all'."

MICHAELIS "Mr. Meyer, I think we need to point out, too, and correct me if I am wrong, but I think at Subdivision, you made a point of the fact that that is the normal procedure you go through on a vacation. You typically go to Engineering and get their permission, and then from there, in this case, with their permission, you went down and were granted a conditional building permit, based on them saying 'okay'. So you did the normal policy that you normally do."

MEYER "I followed what I consider my standard operating procedure. I got Engineering's approval before we ever went forward. We even modified our original request a little bit, to match what Vicky felt comfortable with."

KROUT "First, I probably want to tell the Planning Commission that I think the staff is going to have to talk about this and see if we need to modify our practices so that we don't get into this situation of Water and Sewer and Engineering not agreeing."

At the Subdivision Committee, and I don't recall exactly what the twist was, but you said that you wanted to do a modified Hold Harmless Agreement. Can you remind the Planning Commission what was the modification, and have you talked to Water and Sewer about that?"

MEYER "Yes. I think my original comment was that I didn't want any Hold Harmless Agreement, but if the Subdivision Committee felt that was necessary to support the vacation, I would agree to it, if we could modify it. The Hold Harmless Agreement, generically off of the shelf, basically says if anything goes wrong with that sewer and that easement, it is the homeowner's responsibility to repair and maintain it. That is really an unfair liability to strap this lot with. So my comment was, if we have to have a Hold Harmless Agreement, let's at least modify it so that it is fair to this homeowner. I think Rob (Younkin) had made some statements that he was concerned that maybe the backhoe would hit the house and maybe they were too close, and something like that. We were going to modify that Hold Harmless Agreement to where, if something happened to the house, the city was not held liable."

I still stand behind my original comment--I don't want any Hold Harmless Agreement. But if that is the way the Planning Commission feels it has to be approved, that is fine. But we need the easement vacated for clear title purposes. There is no reason the easement shouldn't be vacated. We have adequate separation between the sewer and the edge of the easement."

JOHNSON "Mr. Meyer just hit on the point that I think the real discussion was about. I am sure that Water and Sewer will get up here and talk in a minute, but I think their concern was about a hose breaking on a backhoe, and the arm swinging around and hitting the house. The city didn't want to be liable for that because of the tight quarters. It wasn't that they couldn't get in there and do the work. I think that is what the Hold Harmless was about. It had to do with the city and what could happen to the house. I guess I would agree. I wouldn't want that on the title that in the event that anything goes wrong with that sewer. He already kind of hit on that."

MEYER "There are locations all over town where there are sewers that close to the edge of an easement and a structure up against the edge of that easement. This isn't a unique thing in my view. It never was when I first filed this and it still isn't."

MARNELL "I think you may have just answered the question I was going to ask. What are the real clearances in this case from the proposed plans, and are they typical of what you would see in sewers. I happen to have a sewer that runs beside my house. I am one of the people that have a rare, side sewer easement. So I am very familiar with building requirements getting next to that."

MEYER "We occasionally put sanitary sewers in side lots. Not a whole lot, but occasionally we've got them running through blocks. We are constantly putting storm sewers in side easements. In my opinion, there is not a whole lot of difference between the two on getting into it and repairing it and taking care of it. It is not unusual."

MARNELL "But the same concerns that Water and Sewer expressed that a hose could break on a backhoe. It would happen in any number of places in town if they were working on sewers that are just as close as this would be."

MEYER "It could happen downtown here. Look at all of the buildings with the sewers running in the alleys."

CARRAHER "Are there any further questions of the applicant? Thank you, Mr. Meyer. Before I open it up to the gallery, since we do seem to have an impasse here between the two departments. First of all, I would like to have a representative of the Water and Sewer come to the podium and state their case. After that, a representative from the Engineering Department."

ROB YOUNKIN "I am here for the Water and Sewer Department. We are opposed to the vacation. The reason is that the Hold Harmless Agreement is a vehicle to allow encroachment into an easement. You have a situation here where, unfortunately, a basement has been poured and a portion of the third car garage is encroaching into an easement. It is unfortunate that it is there, but unfortunately it is there. The vehicle that we have in place is a Hold Harmless Agreement, which will allow that encroachment, while at the same time, it holds us harmless in case we bang into that house or do damage to whatever is encroaching. By the same token, that encroachment is also very close to the sewer. He says it is adequate. Our opinion is that it is not adequate, quite frankly. Because when you take into consideration that the roof is overhanging that, it is our opinion that we are closer than what they showed in the sketch that they provided.

The Hold Harmless Agreement vehicle, besides allowing the encroachment, it says that in the event that their construction or whatever they have encroached on that easement, if that causes damage to the facility that is in there, in this case, a sanitary sewer, because they caused the damage, they should be liable for the cost to repair it. It is simply a matter, in our prospective, that we are looking to protect the interest of the city and the interest of the department and the interest of the rate payer. If we have to go in there later, after they have constructed the house where that is located, if we have to dig down in excess of 8 feet to get to the sewer and we are only 3 or 4 feet away, in all likelihood, there is going to be some kind of damage to that property. But by the same token, to do that kind of work, one of two things would probably have to happen. If we have the equipment to go out there and do that work, that is fine. That would reduce some of our costs, but we are still going to have to look at some form of type sheeting on whatever excavation we have to do.

If it is too close and we are uncomfortable, we may have to hire a contractor to do that work. Then that is an extraordinary cost. The Hold Harmless Agreement says that in the event that those extraordinary costs occur, that the property owner is responsible. The easement was shown and has been platted there since the plat was done. We went out and looked at the site and what is encroaching is the third part of a three-car garage. The typical property out there has a two-car garage. Without the third car garage, this property would be sitting there outside the easement and we wouldn't be having this discussion at all if they had built a simple two-car garage and built the same kind of home which is typical out there.

We went through the neighborhood. There are very few single-family homes there with the three-car garage. Those are at the south end of the properties. Next door to this property and the next few houses down are all typically two-car garages. Across the street from those are twin homes with typically two-car garages. In this case, they have a two-car garage lot that they are trying to put a third car garage on. It is the third car garage that is encroaching. It is not our fault that they built that. The Water and Sewer Department was not involved in the early discussions. If we would have been, we would have said no from square one because even though yes, we will be 5 feet or so from the edge of the easement when they are done, and that is typically where we are. We are 5 feet from the edge of an easement, but that easement is typically running along the backside of a back yard, or in your case, you probably have some side-yard set back that you had to observe. That easement would probably be within the side yard set back. But the edge of your house would not be 3 feet from the sewer. The sewer would not be within 3 feet of a house, it would be within 5 feet of a back yard, or 5 feet from a side yard. It is not typically within 5 feet of a house."

CARRAHER "Are there any questions for Mr. Younkin?"

JOHNSON "Being out there, looking at the residence adjacent to this where you said there are two car garages, would there be space where they could add a third garage on some of these lots?"

YOUNKIN "I think generally probably so."

MARNELL "Do you have a copy of the site plan with you there?"

YOUNKIN "Not with me, no."

MARNELL "When I look at this drawing, unless I am misinterpreting, it looks like I can see where the sanitary sewer runs with respect to the easement lines on these properties. There is one lot marked as 24, which is the one we are concerned with. But when you go to the right, which would be the lot to the east across Cedar Downs Circle, it looks like the sewer is much closer to the property line there than it would be to this vacated piece here."

YOUNKIN "That is correct. The sewer is skewed as it goes through. Across the street from Lot 24 is Lot 3. If you look at the plat, Lot 3 is much larger than Lot 24."

MARNELL "It would appear to me that we already have a situation right across the street that is totally legitimate that is actually closer than what the applicant is asking for."

YOUNKIN "That is correct, but the property across the street is a much larger lot. The house that is on it is further south and there is much more clearance between the easement and the house."

MARNELL "I guess in the case of property rights, what does that have to do with anything? It would be the right to build up next to that easement line. That property owner on Lot 3 could build right adjacent to that line as long as they never crossed into that."

YOUNKIN "That's right. They could build up to the edge of that easement. That is correct."

MARNELL "It would be closer to the actual sewer than Lot 24 would be."

YOUNKIN "That is correct, but they are not encroaching into an existing easement. The easement was there when they were ready to build the house. We would have liked to have been involved in the early discussion, but unfortunately, we were not."

MCKAY "I would like to take it in reverse. You said earlier that the depth of this sewer was 8 feet? It is 8 feet deep?"

YOUNKIN "Yes, sir."

MCKAY "And you also went into detail to say 'well, if it was 8 feet deep the chances of it caving off because it is so close to this' and everything else, I think that the OSHA standards are if it is anything over 6 feet you have to shore up to begin with. Isn't that correct?"

YOUNKIN "That is correct."

MCKAY "And I guess I am having a real problem, having been around here for a couple of years, that all of a sudden we are starting now to...I look at it that if go the way you want to do this, that we are going to do away with vacation of easements whatsoever."

YOUNKIN "Ideally, that would be correct."

MCKAY "I understand where you are coming from, but I am having a real problem with the fact that all of a sudden here now, you want a Hold Harmless Agreement, we don't want to do vacation of easements anymore. You've got 25 feet plus the right-of-way of Central to go in there and work. I am having a real problem with this, Rob. I can't support your stance."

YOUNKIN "One thing that is not shown on this...do you see the wall easement? There is a masonry wall that is approximately 5 feet tall, it is a laid up brick. As it approaches Cedar Downs Circle, the street, it also swings to the south and encroaches the easement on that side, which we will be addressing at a later date with Phil again. But the drawing is probably to scale and it doesn't look bad here, but when you get out there and you see the confines that we actually have to work in, it is much more difficult. It is much tighter than what you are seeing because what you are looking at is basically a sewer that is as deep as from the ceiling to the floor and we are (indicating) that far from a house. That is the problem. And if something happens to that house, even though we have a Hold Harmless Agreement that says that the property owner agrees to waive all claims of law, what will happen is that we will still probably be sued. That would be my guess."

MCKAY "Has that happened in the past?"

YOUNKIN "We have not been sued yet. But by the same token, for a number of years, Hold Harmless Agreements were handed out fairly easily for a number of items. We were basically giving away access to utilities, not just ours, but the other utilities and easements, who are in those easements because those easements because those easements were granted to have public services and provide access and service to the public. If we allow different facilities or different people to encroach, we are losing the ability to access our facilities, making it more difficult to provide service. It is definitely more difficult to maintain. If something would happen to that in the near future and we had to go in there and try to tear up his side yard to work on it, No. 1 it is going to slow us down trying to be so careful and not damage the property, and if there is damage, then that is going to be a mess to go on.

The biggest thing, too, is that the only part of this house that is encroaching is the third car garage. They could eliminate that third bay of that third car garage and they wouldn't be encroaching in any way. We would have tight confines, but we would still be able to get in and maintain it at a reasonable level at reasonable expense. But with that third car garage encroaching the way it is, and that is the only part of this property that is encroaching, it makes it very difficult to maintain that sewer in that location."

MCKAY "But the flip side of a Hold Harmless agreement is that you don't have to be careful then. Your guys can go out there, swing the backhoe around, hit it, back into it, do anything else. You have no responsibility because you have a Hold Harmless Agreement. So where does the responsibility stand?"

YOUNKIN "Well, that has to deal with good customer service. We would not go out there willy nilly and slam into the house just because we can. We try to avoid that."

MCKAY "I didn't say that. I am saying that by the same token if you tell your guys 'you've got to be within these certain confines and you can't be reckless' they will do so. But if you've got a Hold Harmless Agreement, the flip side of it is that. You can do anything you want to and there is not a thing in the world that the owner can do."

YOUNKIN "We would not do that. Whoever we would send out, our people or our agent, to go out and do the work, they would be careful. But in the event that something happens, like if the hose breaks on a backhoe, and it swings into the house, that is an accident. It is for those accidents that the Hold Harmless is supposed to hold us harmless. If that house was not there and the hose broke, we wouldn't hit the house and there would be no problem. If that third car garage was not there and the hose breaks and the bucket swings, we still don't hit the house. But with that third car garage there, there is a good chance that we could hit the house."

CARRAHER "We are going to move on to a new line of questioning. Mr. Hentzen."

HENTZEN "The third bay of the garage. How much does it encroach upon the present easement?"

YOUNKIN "Approximately 4 feet."

HENTZEN "Approximately 4 feet."

YOUNKIN "Right. Which is the part that they want to vacate."

HNTZEN "Sure. And do you know, builder get a permit from the permit people?"

YOUNKIN "The builder was able to get a conditional permit from OCI to do some footing of some foundations. They do not have the full permit."

HENTZEN "A conditional permit to put the foundations in. Do you know if they were restricted to stay out of that easement by that information on the permit?"

YOUNKIN "I do not. A representative from Central Inspection could probably give you the answer to that, but I don't know."

CARRAHER "Are there any further questions for the speaker. Thank you, Mr. Younkin. Now, I would like to hear from a representative of the Engineering Department."

VICKY HUANG "I am representing City Engineering. Like Phil said, before he filed the vacation case, he did come in and talk to me. We agreed that we can support the vacation case and based on that, he went and got Central Inspection to give them a Conditional Permit to start construction."

The reason I agreed--I guess there are three reasons that I look at. One is the existing easement is 25 feet, and they request to vacate 4 feet. We still have 21 feet, which meets our minimum standard for easement, which is 20 feet. The sewer is about 8 to 9 feet deep in that location, which is a typical depth of a sewer. Pretty typical all around the City. The third reason is that there are, all over the city, where some sewers go through side yards between two houses. In those instances, typically we have a 20 foot easement centered on the lot line and the sewer will be on the center of one side, which makes it 5 feet from the edge of the easement. A house could be built, in many cases, 5 feet from the sewer. That was my reasoning in agreeing to this vacation case. I think Engineering still holds that position. We would not object to the vacation of the easement in this instance."

CARRAHER "Are there any questions for Ms. Huang?"

MICHAELIS "Just a point of clarification that I think is very critical here. Even with the 4 foot vacation that they are asking for, do you still feel that you have technically one foot more than you typically do in your other easements?"

HUANG "Well, because the 1 foot extra is from the standard width of 20 feet, but the sewer, since it is closer to the edge, when they vacate 4 feet, the sewer is still 4 to 5 feet away."

MICHAELIS "Which is the normal practice?"

HUANG "Yes."

MICHAELIS "Okay. Thank you very much."

PLATT "I hate to sound like the Supreme Court, but you said, and I think I am correct, that you think it is still the position of the Engineering Department. Is it or isn't it? Do you support the vacation or don't you?"

HUANG "We are not opposed to this vacation case."

PLATT "I just wanted to be sure."

KROUT "Vicky, do you recall, have we vacated easements to leave 4 feet of distance between the sewer and the side line?"

HUANG "I would be very consistent. I want to protect this standard for the easements, so if there are some people who want to vacate an easement and make it less of a standard easement, we have always been in the position of not agreeing to the vacation of any of the easement to leave us with less than standard easement."

CARRAHER "Are there any further questions of the speaker? Thank you, Ms. Huang. Is there anyone in the gallery who is wishing to speak either in favor or in opposition to this item? Seeing none, Mr. Meyer, you have an opportunity for rebuttal if you so chose."

MEYER "I think the point I would like for the Planning Commission to understand today is that I am not out there asking for something really unique. I am not out there trying to slip something by and slide it through that is not appropriate. If anything, the thing should have only been platted as a 20-foot utility easement in the beginning. If that would have happened, the sewer would be in the exact location, my house would be where it is at, if not a foot north, and we wouldn't be having this discussion.

Vicky mentioned, and I was going to point it out to you, when you run sewers through side yards, you have a 20-foot utility easement. The sewer sets, usually, 5 foot off of the center line; five foot from the edge of the easement. You have 6 foot side yard setbacks, so at that point, your side yard setback doesn't control where the house goes, the easement controls where the house goes. That house sets on the edge of that easement. I think just about every subdivision that is platted has that situation in it. Those sewers have got to run through side lot lines occasionally, to get to the other block. It doesn't happen a lot, but it happens on almost every subdivision. I just want you to know that we are not asking for any big favors here--we are not trying to slide anything past anybody. We really felt like we did our homework. We took the easement back to where it probably should have been, and we would like to ask for your support today in approving this."

CARRAHER "Are there any questions of the speaker."

WARNER "Mr. Meyer, were you aware that you were going to encroach on the easement before you got your conditional permit and put the foundation in?"

MEYER "No. We pulled our conditional permit after we met with the Engineering Department and had their support."

WARNER "Then you are telling me that you were aware that you were going to be on the easement."

MEYER "Yeah."

WARNER "You didn't find this out after that."

MEYER "We didn't go build it and then find it. We are not trying to correct the situation. No. We knew that. We pulled our condition based on the support to complete the vacation."

WARNER "That was my point. This is not after the fact."

MEYER "No. We are not trying to correct a mistake."

CARRAHER "Are there any further questions of the speaker? Thank you, Mr. Meyer. We will move it back to the Commission. Are there any further questions of commentary regarding the item?"

MCKAY "I think, like I said earlier, that by us coming in and asking for a Hold Harmless Agreement, that is almost like what an easement is anyhow. The city or utility companies have the right to come in and work on stuff when they do something, you know, tear up a fence or hit a house or something. It is part of the whole idea. So I have a problem with that. I think we are setting a precedent that from now on any time there is an easement vacation that we are going to have to put up a Hold Harmless agreement. With that, I am ready to make a motion."

MOTION: That the Planning Commission recommend to the governing body that the request for the easement be approved as originally requested, without the Hold Harmless Agreement.

MCKAY moved, **MICHAELIS** seconded the motion.

CARRAHER "Are there any further questions regarding the motion, or any commentary regarding the motion?"

WARREN "What he is saying is that he is moving to vacate the easement as requested by the applicant without a Hold Harmless Agreement?"

MCKAY "Right."

JOHNSON "After hearing this case last week for I don't know how long, and I don't know how long we have been on it today, I have to agree with Commissioner McKay, but I think the real thing that I have a problem with is here two departments for the City of Wichita is in disagreement and we are going to get to choose which one is right and which one is wrong, which I don't like. I wish it hadn't come to this. I think it is kind of unique. Being on here for a couple of years myself, I have seen some cases where somebody has gotten off and got a basement in an easement and we have vacated them, and as far as I know, we haven't had any Hold Harmless Agreement. Now, on this case, when they were asked before they ever took a permit out and being in the construction business, I have seen what you sign when you take a conditional permit out, so I am not so sure that isn't why this came back like this. Like I said, I am going to support the motion, even though I don't feel comfortable about it because I think we are trying to decide which one of the department of the city is right. I hope that this doesn't happen again."

CARRAHER "Thank you, your point is well taken."

MICHAELIS "The only comment I would like to make, too, is kind of along those same lines. I think it is kind of hard for us to change the rules in the middle of the game. If we have a policy in effect that has been used and utilized for a number of years, there is no reason, all of a sudden, to try to penalize somebody for using that. If we don't like the policy, let's change the policy from here on out, but I don't think it is fair to ask this person to be a scapegoat."

GAROFALO "I am looking here at the Subdivision's vote. It was 5-1. Apparently there were 5 who favored the Hold Harmless Agreement at that time. I am kind of curious as to what is changing their minds at this point. Can you enlighten us on that?"

MICHAELIS "Primarily the main reason is because the applicant was saying that he would defer it than have it defeated. This was the solution to go through there. So it wasn't a question, necessarily, that we supported the Hold Harmless, it was a question of if that could be worked out between them, then that would be okay. Obviously, that hasn't been worked out between them. But that was the reason for it."

PLATT "I agree with Mr. Johnson. I don't like the position that we are in today at all. But those things happen, so we have to live with it, I guess. I am not going to support the motion though. It seems to me that the arguments for it are well taken. I guess my approach is that the lot was platted, the easement was established, the building plans were based on that, and now, we are, in essence, asked to make an exception here. It seems to me that when someone wants an exception that they have to also assume some of the responsibilities for granting the exception. It seems to me here that that is where the Hold Harmless Agreement is legitimate and should be executed. I would support the vacation with the Hold Harmless Agreement, but not without it."

CARRAHER "Is there anyone else who would like to speak to this item?"

VOTE ON THE MOTION: The motion carried with 9 votes in favor (Michaelis, Warren, Warner, McKay, Johnson, Hentzen, Lopez, Marnell, Carraher) and 3 in opposition (Platt, Garofalo and Barfield).

KROUT "This will go to the City Council for a final decision and we will try to get the two departments together to discuss this before we schedule that City Council agenda item."

3/2. VAC2000-00061 - Request to vacate a protection drainage ditch, described as:

A Tract of land, 130 feet wide, extending 65 feet on each side of a center line, described as follows: Beginning at the center of the South line of the N1/2 of the SE1/4 of Section 24, Township 28 South, Range 1 West, and extending thence Northwesterly along a 3 degree, 20 minute curve to the left, to the center of said section, and containing 6¼ acres, more or less. Generally located near 47th Street South and Meridian.

REASON FOR REQUEST: To correct an error in the description of the protection drainage ditch right-of-way which will be relocated on the proposed Hidden Creek Addition to match existing improvements.

To correct an error in the description of the protection drainage ditch right-of-way which will be relocated on the proposed Hidden Creek Addition to match existing improvements.

Based upon the information available prior to the public hearing, staff recommends the MAPC make the following findings and recommendation to the City Council:

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
 - 1. That due and legal notice has been given by publication as required by law, by publication in the Wichita Eagle of notice of this vacation proceeding one time November 28, 2000, which was at least 20 days prior to this public hearing.
 - 2. That no private rights will be injured or endangered by the vacation of the above-described drainage dedication, and the public will suffer no loss or inconvenience thereby.
 - 3. In justice to the petitioner(s), the prayer of the petition ought to be granted.
- B. Therefore, the vacation of the drainage dedication described in the petition should be approved subject to the following conditions:
 - 1. This Vacation request shall be placed on the same City Council agenda as the Hidden Creek Addition is considered.
 - 2. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.

SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:

The Subdivision Committee recommends approval, subject to

1. This Vacation request shall be placed on the same City Council agenda as the Hidden Creek Addition is considered.
2. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.

CARRAHER "Is there anyone in the gallery who is here to speak on this item? Okay, there is someone here to speak. Mr. Carroll, I am going to yield the floor to you."

BARRY CARROLL, Planning staff "This is a request to vacate a protective drainage ditch. It is simply to correct an error in the description and it will be relocated on the proposed Hidden Creek Addition, to match existing improvements. We are in support of this request."

CARRAHER "Are there any questions of staff? Thank you, Mr. Carroll. Is the applicant here?"

BRAD RILEY "I am with Southborough Partners. This is pretty simple; it is just as he said. We just want to correct the legal description of the improvements there. We are not changing anything. Just so that this is recorded correctly on the new plat."

CARRAHER "Okay. Are there any questions of the speaker? Thank you, sir. I am assuming there is no one in the gallery who wishes to address this item either in favor or in opposition. Okay, then I will move it back to the Commission. What is the pleasure of the Commission?"

MOTION: That the Planning Commission recommend to the governing body that the request be approved.

JOHNSON moved, **WARNER** seconded the motion, and it carried unanimously (12-0).

CHRIS CARRAHER, Chair, read the following zoning procedural statement which is applicable to all City of Wichita zoning cases:

Before we begin the agenda, I would like to take this opportunity to welcome members of the public to this meeting of the Metropolitan Area Planning Commission. Copies of the agenda for today's meeting, the public hearing procedure, and copies of staff reports on zoning items are available at the table nearest to the audience.

The Commission's bylaws limit the applicant on a zoning or subdivision application and his or her representative(s) to a total of ten minutes of speaking time at the start of the hearing on that item, plus up to two minutes at the conclusion of that hearing. All other persons wishing to speak on agenda items are limited to five minutes per person. However, if they feel that it is needed and justified, the Commission may extend these times by a majority vote.

All speakers are requested to state your name and address for the record when beginning to speak. When you are done speaking, please write your name and address, and the case number, on the sheet provided at the table nearest to the audience. This will enable staff to notify you if there are any additional proceedings concerning that item. Please note that all written and visual materials you present to the Commission will be retained by the Secretary as part of the official record. If you are not speaking, but you wish to be notified about future proceedings on a particular case, please sign in on that same sheet.

The Planning Commission is interested in hearing the views of all persons who wish to express themselves on our agenda items. However, we ask all speakers to please be as concise as possible, and to please avoid long repetitions of facts or opinions which have already been stated.

For your information, the Wichita City Council has adopted a policy for all City zoning and vacation items, which is also available at the table with the other materials. They rely on the written record of the Planning Commission hearings and do not conduct their own additional public hearings on these items.

ZONING:

4. **Case No. ZON2000-00049** - Caywood, LLC, c/o Matt Eck; Phil Meyer, Baughman Company, P.A. request zone change from "SF-6" Single-Family Residential to "TF-3" Two-Family Residential on property described as:

Commencing at the NW corner of the S 1/2 of the SW 1/4 of Sec. 13, Twp. 28-S, R-1-W of the 6th P.M., Sedgwick County, Kansas; thence S00deg 16'59"E along the west line of said SW 1/4, 50.00 feet for a point of beginning; thence continuing S00deg 16'59"E along the west line of said SW 1/4, 519.15 feet to a point 754.00 feet north of the SW corner of said SW 1/4; thence N 90deg00'00"E parallel with the south line of said SW 1/4, 208.71 feet; thence S00deg16'59"E parallel with the west line of said SW 1/4, 135.00 feet; thence N90deg00'00"E parallel with the south line of said SW 1/4, 391.29 feet; thence S00deg16'59"E parallel with the west line of said SW 1/4, 619.00 feet to a point on the south line of said SW 1/4; thence N90deg00'00"E along the south line of said SW 1/4, 511.43 feet; thence N00deg16'59"W parallel with the west line of said SW 1/4, 110.00 feet; thence N05deg25'49"E, 60.27 feet; thence N00deg16'59"W parallel with the west line of said SW 1/4, 185.00 feet; thence N90deg00'00"W parallel with the south line of said SW 1/4, 213.43 feet; thence N00deg16'59"W parallel with the west line of said SW 1/4, 230.00 feet; thence N12deg26'56"W, 81.93 feet; thence N90deg00'00"W, 114.24 feet to a point on a curve to the left; thence northwesterly and westerly along said curve, having a central angle of 70deg31'36" and a radius of 207.00 feet, an arc distance of 254.80 feet, (having a chord length of 239.02 feet bearing N54deg44'12"W), to the P.T. of said curve; thence N90deg00'00"W parallel with the south line of said SW 1/4, 111.25 feet to the P.C. of a curve to the right; thence westerly and northwesterly along said curve, having a central angle of 62deg57'51" and a radius of 68.00 feet, an arc distance of 74.73 feet, (having a chord length of 71.02 feet bearing N58deg31'04"W), to the PRC. Of a curve to the left; thence northwesterly along said curve, having a central angle of 25deg35'32" and a radius of 207.00 feet, an arc distance of 92.46 feet; thence N00deg16'59"W parallel with the west line of said SW 1/4, 285.57 feet; thence N46deg53'56"W, 112.43 feet; thence N89deg56'55"W parallel with the north line of the S 1/2 of said SW 1/4, 266.29 feet to the point of beginning, all being subject to road rights-of-way record. Generally located on the northeast corner of 47th Street South and West Street.

BARRY CARROLL, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

BACKGROUND: The applicant is requesting a zone change from "SF-6" Single-Family Residential to "TF-3" Two-Family Residential for a 12.2-acre tract located on the northeast corner of 47th Street South and West Street. The property is currently being platted as the "Angel Fire Addition. The property is undeveloped. This area was recently annexed and is now within the corporate limits for Wichita. The application area is adjacent to Sedgwick County. 47th Street South is the southern boundary between the City and Sedgwick County.

The applicant intends to construct 30 "twin homes" (duplexes) or 60 dwelling units on the site. The application area is a "L" shaped parcel. Duplex development is first permitted in the "TF-3" Two-Family zoning district according to the Unified Zoning Code (UZC). Access to the site will be from one opening along West Street and two openings along 47th Street South per the platting process.

The application area is characterized by mixed uses. The "Cotton Wood Grove" manufactured home park is located to the north and zoned "MH" Manufactured Housing. To the east is open ground and further east is a residence that is zoned "SF-20." The area located to the west is zoned "LC" Limited Commercial. To the south is a residence and further south is a nightclub that is zoned "SF-20.

CASE HISTORY: The property is currently being platted into 30 lots as the "Angel Fire Addition." The MAPC Subdivision Committee approved the final plat on July 13th, 2000.

ADJACENT ZONING AND LAND USE:

NORTH: "MH"	Manufactured Housing	Manufactured Home Park
EAST: "SF-20"	Single Family	Agriculture/Residential
SOUTH: "LC"	Limited Commercial	Residential/Nightclub
WEST: "LC"	Limited Commercial	Undeveloped Open Ground

PUBLIC SERVICES: Access to the property is via West Street and 47th Street South, two-lane arterials paved to county standard. Traffic volumes along West Street in 2000 were low, rated as 4,866 ADTs for the segment north of 47th Street South. Volumes are predicted to increase to approximately 6,565 by 2030. Traffic volumes along 47th Street South, east of West Street, in 2000 were low, rated as 4,312 ADTs. Volumes are predicted to increase to approximately 5,407 by 2030. There are no improvements included in the C.I.P. for 2000-2009 for 47th Street South near West Street or vice versa.

City water and sewer services are not available to the application area at the current time. Municipal water and sewer services will be extended from the "Cotton Wood Grove" manufactured home park that is located north of the application area.

CONFORMANCE TO PLANS/POLICIES: The "Wichita Land Use Guide" in the 1999 Update to the Wichita-Sedgwick County Comprehensive Plan identifies this area as appropriate for low-density residential use, and places it within the 10 Year Urban Service Area and also within the 30 Year Urban Service Area. The Plan encourages residential semi-attached dwelling units such as duplexes and town homes. Medium-density residential lots may serve as a transitional land use between low and high residential uses, as well as serve to buffer lower-density residential from commercial uses. The area to the north is shown for commercial uses, east for residential, and west of the application area is shown for commercial. The area to the south is identified as remaining in low-density use.

RECOMMENDATION: Based on the information available prior to the public hearing, MAPD staff recommends the application be APPROVED, subject to platting within one year. This recommendation is based upon the following findings:

1. The zoning, uses and character of the neighborhood: The surrounding area is on the urban fringe of Wichita along West Street and 47th Street South. A mixture of commercial and residential land characterizes the land use. The "Cotton Wood Grove" manufactured home park is located to the north and zoned "MH" Manufactured Housing. To the east is open ground and further east is a residence that is zoned "SF-20." The area located to the west is zoned "LC" Limited Commercial. To the south is a residence and further south is a nightclub that is zoned "SF-20. The character of the neighborhood will be one of mixed residential and commercial uses.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "SF-20" Single-Family District that is currently undeveloped. The site could be developed as zoned. However, this area has seen an increase in platting and zoning activity to urban density. Rezoning of this property to "TF-3" would not detrimentally impact adjoining property and would provide for a more appropriate density of development.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Adjacent properties are zoned "SF-20" Single-Family Residential or "LC" Limited Commercial. Rezoning of this property to "TF-3" Two-Family District will not introduce any new potential uses to the area.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The request is consistent with the statement that the application area is appropriate for "low-density residential." The Plan encourages the use of medium and high-density residential development as buffers to commercial uses located at intersections. The site is located near the intersection of West Street and 47th Street South. The Plan also discourages the commercial "stripping out" of arterials.
5. Impact of the proposed development on community facilities: Platting should ensure that sufficient street right-of-way is provided on West Street and 47th Street South for future expansion. Other community facilities should not be adversely impacted.

CARROLL "The area you see in red is already zoned 'LC'. The application area, as you can see, is around that. To the northeast is undeveloped land at this point. This is technically in the County. There is a nightclub nearby and a residence. To the west is the Sedgwick County yard; and a trailer park to the northeast, and West Street is to the north.

The agent, Phil Meyer, with Baughman is here today. The area in question is 12.2 acres. The request is for 30 twin homes or 60 dwelling units. Access to the site will be from one opening along West Street and two openings along 47th Street South. The Angel Fire plat has been completed and the City Council has approved it. You have been provided a fax from an individual who had expressed some concerns about drainage and I am assuming that these drainage issues were addressed in the platting process.

The application area is characterized by mixed uses. There is the Cottonwood Grove Manufactured Home Park to the north, zoned 'MH' Manufactured Housing; to the east is open ground zoned 'SF-20'. The area located to the west is 'LC'; to the south is the residence and nightclub we mentioned before. Currently city water and sewer services are not available, but will be extended from the Cottonwood Grove Manufactured Home Park to the north. The Sedgwick County Comprehensive Plan identifies this as appropriate for low density residential uses and it is within both the twelve year urban service area and also within the 30 year urban service area. The plan encourages residential dwellings such as duplex and town homes. Consequently we are recommending approval of this, subject to platting, which is to be completed within 1 year. I will stand for questions."

CARRAHER "Are there any questions for staff regarding the item? Thank you, Mr. Carroll. Now we will hear from the applicant."

PHIL MEYER "I am with the Baughman Company, agent for the applicant. I think Barry presented this very well. We are requesting duplex zoning on this. The plat hasn't been completed. We have platted the lots large enough for duplex zoning, labeled them 'proposed duplex' when we ran the plat through there. With the commercial zoning in the corner, the industrial zoning across the street, the manufactured home zoning to the north, this is a nice buffer from the commercial and industrial uses to the rest of our subdivision and it just completes our overall development plan. With that, I will answer any questions you may have."

CARRAHER "Are there any questions of the applicant? Thank you, Mr. Meyer. We will move it to the gallery. Is there anyone in the audience who is here to speak in favor of this item? Is there anyone in the gallery who wishes to speak in opposition to the item?"

KAY ORR "I live at 4905 S. Knight. I believe we have been deleted from the map that is up there. We live on the Ditch. I am not crazy about any more buildings around us, but probably that is what people thought when we moved out there. But my main concern is drainage. We have lived out there since 1977 and we have had water, water and more water, and more water. And we are on septic tanks and wells. We are concerned about that and our basements. Now they have done some work down on the Cowskin, but we have no way of knowing whether it did any good or not. It may have solved our problem we have now, but we are the lowest people around there, and the water is going to come there.

We have black gumbo dirt that will hold water for ever, but it will not go down. I just don't know what we can do with any

more water, and I am really concerned about this, not only of the drainage, but of the surplus water, because there aren't ditches around there along the roads. They keep telling us they are going to put ditches along West Street, but they never have."

CARRAHER "Are there any questions of the speaker? Thank you, Ms. Orr. Is there anyone else in the gallery who is here to speak in opposition to the item?"

CLINTON ORR "I live at 1001 West 51st Street South. That was my Mother, so I have some interest in this property we own. It is an acreage, so there is possible future development. Just to reiterate what she said, the drainage is bad. This outline you have of the area here is actually 'the ditch'. I was surprised that there would be any development accepted on that. When I first saw it, I told her that that couldn't be right--that is the ditch. That is a gully that is outlined there. Maybe on either side of it.

The photos you have been shown don't show the actual property. They showed the farmland on either side of it, but not what it really looks like because of the ditch. The future run-off in that area, I don't know where you are going to take the water, but as she said, with it being developed out there, the run-off is increased. It used to never get up into the outbuildings and it is now quite extensive. They have done a little work on the lower end and Commissioner Hancock said they would try to relieve where it runs into what the remnants of the Cowskin is there on the east side of West Street. But he didn't know if it was in the C.I.P. or not, but it really should be taken down West Street to what is the Cowskin Creek because it shouldn't be going through here any more. Something needs to be done in the future. And now, we are going to build in the middle of this ditch and increase the run-off. Over the years, you can see the increase in it.

And, I am in opposition to the twin-homes. With the proliferation of the mobile home and manufactured homes in that area, I would like to see more of a mixture of the single-family dwellings to protect that part of the area."

CARRAHER "Are there any questions of the speaker? Thank you, Mr. Orr. Is there anyone else in the gallery who wishes to speak in opposition to this item?"

BOB SMITHWICK "I live at 4922 South Mt. Carmel, Stonebriar Addition. I am not opposing the rezoning of the property in question. What I am here for is the drainage. I have found out, through Chris Carrier, Vicki Huang and Mr. Jennings of the City, that there are two restrictions downstream on the Cowskin Creek that is causing the water to back up into like my area, the Stonebriar Addition and these folks' homes, and stuff like that. Some farmers have put a road across the Cowskin Creek, which makes the water back up. It doesn't let the water flow on through, plus going into the big ditch, the flapper valve there is too small to handle the water.

Mr. Carrier is, right now, trying to get these restrictions removed from the creek, but we don't know how long it is going to take. August of last year, during that 8 inch rain we had, there was a bunch of houses that got flooded in the new housing addition where I live because of this restriction. What I am concerned about is that Vicki Huang told me that in this new addition here that they are going to build some retaining ponds. Well, what happens to this access water that comes over the retaining ponds and down the ditch onto Cowskin Creek?

She also told me that they are going to make the ditch on the south side of 47th Street on the east deeper, which the water will also run east into our area, into this Stonebriar addition, which is lower than about anyplace there. It is about 4 to 5 foot lower from 47th Street to the south end. Before anything else goes on, I would like to see the Cowskin Creek opened up, cleaned out, dug a little bit deeper to handle all of the water and stop the flooding. As I have said before in other meetings here, I don't want another West Wichita on the south side of town. That is what is happening right now. It happened in August of 1999, it happened on Halloween night of 1998 and I just don't want to see more flooding. I would like this creek corrected; all of the drainage corrected before anything else is done.

Also, I would like to ask the developer why, as of Tuesday, where they got their land right here (indicating). As of Tuesday, they had it all laid out to the session to the east of where there is sand. They got the stakes and everything. It is right across the street from 9th Street. It is still there as of Tuesday of this week. There were no stakes or anything else on this part where they are talking about. I would like to know about that. Did they get it mixed up with the wrong area, or what? Also, I would like to know, if these retaining ponds are put in, how do we know, in that area that they won't become mosquito infested ponds, like this north area where they are wanting to build, up by the trailer home. I would like for this Commission and whoever else, to make sure that the drainage is taken care of, the mosquito problems are taken care before anything else is done. Thank you all."

CARRAHER "Are there any questions of the speaker?"

LOPEZ "Where does the Cowskin run through there?"

SMITHWICK "The Cowskin Creek runs....it doesn't show it on this map here, but it runs way down here (indicating) back behind. My area is not even on the map here. It is way back here."

LOPEZ "Is that the Cowskin to the left up there in the blue?"

SMITHWICK "No. Well, the Big Ditch runs right down through here somewhere (indicating) and the Cowskin Creek runs down through here. Downstream of where I am at, the farmers have put in culverts and put a road over those culverts which is too small to handle the water flow. As I said, in August of last year, we had a bunch of houses to get flooded out

in those new homes there. Like I said, I don't want to see another West Wichita on the south side of town. I want to make sure that everything is correct before anything is built and the creek is taken care of."

CARRAHER "Are there any further questions of the speaker? Thank you, Mr. Smithwick. Is there anyone else in the gallery who wishes to speak in opposition to this item?"

SMITHWICK "I do have some pictures I would like for everyone too see, showing what the water looks like in the back yards in that neighborhood."

CARRAHER "Do you want to submit those for the record? Those do become the property of the Commission, do you know that? Okay, if you would just pass those pictures on the end, or give them to Mr. Carroll. Okay, Mr. Meyer, the floor is yours for rebuttal."

MEYER "Our office is very aware that drainage is a concern on this. This project has been through the Planning Commission already. The plat has been through City Council although Neil is still holding it right now. We have not recorded it. We know it is a drainage concern because we have worked with both the City Engineering and County Engineering. We have annexed this property into the city; it is in the city limits. Vicki approved our drainage plan as it went through the Subdivision Committee and the Planning Commission. We went and met with the County--Jim Weber and several of his people because he was concerned about the drainage and he asked to review and approve it also. We worked with his department.

I am not going to stand here and tell everybody in the audience that we are going to solve their drainage problems because we are not. We are going to help it a little bit because right now that water is shooting right through this property on down to them and we are going to do some detention, which is going to help a little, but there are too many other factors contributing to their drainage problem that we are not going to solve it. What we have done meets the subdivision regulations with our detention ponds and will help their drainage a little bit. I just can't stand here and tell them that their drainage problem is solved because there are too many issues contributing to their drainage problem for us to solve it. I can tell you that both the City and County Engineering departments were concerned about this and watched the drainage plan and worked with our office all the way through the process. I will answer any questions."

CARRAHER "Are there any questions of the applicant?"

MEYER "I can address his one question. The stakes to the east of this zone change are our first stage, which is the single-family portion. It is our first phase of development, which is all of the single-family portion. That is why the stakes are sitting east of what he saw outlined. It is just our Phase I."

CARRAHER "Any other questions? Thank you, Mr. Meyer. I will bring it back to the Commission. Are there any questions or commentary by Commission members with regard to this item? What is the pleasure of the Commission?"

MOTION: Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: The surrounding area is on the urban fringe of Wichita along West Street and 47th Street South. A mixture of commercial and residential land characterizes the land use. The "Cotton Wood Grove" manufactured home park is located to the north and zoned "MH" Manufactured Housing. To the east is open ground and further east is a residence that is zoned "SF-20." The area located to the west is zoned "LC" Limited Commercial. To the south is a residence and further south is a nightclub that is zoned "SF-20. The character of the neighborhood will be one of mixed residential and commercial uses. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "SF-20" Single-Family District that is currently undeveloped. The site could be developed as zoned. However, this area has seen an increase in platting and zoning activity to urban density. Rezoning of this property to "TF-3" would not detrimentally impact adjoining property and would provide for a more appropriate density of development. Extent to which removal of the restrictions will detrimentally affect nearby property. Adjacent properties are zoned "SF-20" Single-Family Residential or "LC" Limited Commercial. Rezoning of this property to "TF-3" Two-Family District will not introduce any new potential uses to the area. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The request is consistent with the statement that the application area is appropriate for "low-density residential." The Plan encourages the use of medium and high-density residential development as buffers to commercial uses located at intersections. The site is located near the intersection of West Street and 47th Street South. The Plan also discourages the commercial "stripping out" of arterials. Impact of the proposed development on community facilities: Platting should ensure that sufficient street right-of-way is provided on West Street and 47th Street South for future expansion. Other community facilities should not be adversely impacted.) I move that we

recommend to the governing body that the request be approved, subject to staff recommendations.

MARNELL moved, **WARNER** seconded the motion.

MICHAELIS "I would just like to make a general comment, especially to the people who took the time to come here and speak on this. Thank you for that because we know that it does take time out of your day. But typically, development is not necessarily a bad thing. It can take some drainage issues that are uncontrollable and make them controllable. So as a general rule, just because something is going to go in there does not mean it is bad. The Engineering Departments do look at that pretty hard."

CARRAHER "Are there any further commentary or questions by the Commission?"

WARNER "I would like to make a comment, too. This is a zone change. It is already zoned Single-family. They can go in there and do the same thing, basically, now, without coming here. What we are doing today doesn't add any more or any less to whatever water problems there are there now. That is why I seconded the motion."

CARRAHER "Is there any further commentary? Seeing none, we will move into a voice vote."

VOTE ON THE MOTION: The motion carried unanimously (12-0).

5. **Case No. CON2000-00056** - Cherrywood Construction (applicant); Savoy, Ruggles & Bohm, Mark Savoy (Agent) request a Conditional Use to permit a neighborhood swimming pool, described as:

Lot 19, Block C, Tara Falls Addition, Wichita, Sedgwick County Kansas. Generally located on the southwest corner of 127th Street East and Harry.

BARRY CARROLL, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

The applicant is requesting a Conditional Use to permit a neighborhood swimming pool on a platted .29-acre tract of land of the "Tara Falls Addition." The application area is a trapezoid shaped parcel and is located at the southwest corner of 127th Street East and Harry Street. The site plan shows a 16-foot by 32-foot swimming pool in the southeast corner of the property. Parking is shown west of the swimming pool with parking slots for eight (8) vehicles. A storage and restroom building is located west of the pool; a tot pool is located to the north and a playground to the southwest (see site plan). Use of the facilities will be limited to residents of the Tara Falls Addition. Access will be from one opening along the east side of Tara Falls Court.

This property is zoned "SF-6" Single-Family Residential and is currently undeveloped. Neighborhood swimming pools can be a "use-by-right" if the site is identified at the time of platting and a site plan is submitted for review and approval. After the plat is recorded, a Conditional Use is required.

The Unified Zoning Code (UZY) requires "one parking slot per 100 square feet of pool area, plus one slot per 100 square feet of clubhouse area" for a "swimming pool, private/neighborhood." The parking stalls, as shown in the plan, are both within the required 25' front setback from Tara Falls Court. It is estimated that the pool will be 16' by 32' (512 square feet). The bathhouse building is shown to be 12' by 10' (120 square feet) and will be located northwest of the pool. Based upon the projected square footage of the pool and bathhouse [512+120=632 square feet], the UZY requires six (6) parking slots.

According to the submitted plan, there are eight (8) parking slots provided, including one handicapped slot. Consequently, there are two more parking slots than is required by the UZY. Many of the patrons will likely walk to their neighborhood pool. Both streets are designed to accommodate on street parking on both sides if needed. An Administrative Adjustment will be required to permit parking within the front yard setback.

There is a playground and a kid's pool shown east of the pool. Use of the facilities will be limited to residents of the Tara Addition. There will be access to the site from the east side of Tara Falls Court. The adjoining properties are zoned "SF-6", Single-Family Residential. The lots, to the north, east and west are all single-family dwellings. The land to the south is undeveloped.

The hours of operation for and maintenance of the pool will be determined by the homeowners' association by restrictive covenant. The lighting for the pool will be shielded from the adjacent single family dwellings. There will be a six-foot wrought iron fence surrounding the pool. Paying members of the homeowners association will be given access to the pool.

CASE HISTORY: The current site is platted as part of the "Tara Falls Addition" that was approved on June 9, 1998.

ADJACENT ZONING AND LAND USE:

NORTH:	"SF-6" Single-Family Residential	Single-Family Residences
EAST:	"SF-6" Single-Family Residential	Single-Family Residences
SOUTH:	"SF-6" Single-Family Residential	Undeveloped
WEST:	"SF-6" Single-Family Residential	Single-Family Residences

PUBLIC SERVICES: Tara Falls Court is a two-lane residential street. Traffic volumes are not rated. Water/sewer and other municipal services will be provided to the site.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the Comprehensive Plan identifies this property as "low density residential." This residential category provides for the lowest density of urban residential land use and consists of traditional, single-family detached homes, zero lot line units and cluster subdivisions, as well as schools, churches and similar uses found in such areas. One of the objectives of the Plan is to "develop and maintain a system of parkland, open space and recreational facilities which provide a diverse set of recreational opportunities for existing and future residents."

RECOMMENDATION: Based on the information available prior to the public hearing, MAPD staff recommends the application be APPROVED, subject to the following conditions:

1. An Administrative Adjustment will be required to permit parking in the front yard setback to eight feet.
2. The applicant shall submit a Landscaping Plan to be reviewed by the Director of Planning.
3. The property will be developed in general conformance with the site plan submitted to and approved by the Board of Zoning Appeals.
4. Development and use of this site for a neighborhood association swimming pool shall be in accordance with all applicable codes, including building and construction codes, landscape ordinance, health codes and operational standards.
5. Violation of the foregoing conditions shall be cause for declaring this Conditional Use null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The subject property is situated in the middle of a developing residential area. Surrounding properties are all zoned "SF-6." Access to the site is from a residential street. The lot is within walking distance from the surrounding single-family homes, and the off-street parking requirements minimize the number of parked cars on the local street. Small private areas like this are becoming more commonplace in new subdivisions.
2. Extent to which removal of the restrictions will detrimentally affect nearby property: Locating a neighborhood swimming pool along a local street with residential development will introduce more noise for the nearby residential properties. However, this use is limited by definition to subdivision residents and their guests, and the development of the property in accordance with requirements of the Conditional Use will minimize these problems.
3. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The Land Use Guide of the Comprehensive Plan identifies this property as "low density residential." This residential category provides for the lowest density of urban residential land use and consists of traditional, single-family detached homes, zero lot line units and cluster subdivisions, as well as schools, churches and similar uses found in such areas. One of the objectives of the Plan is to "develop and maintain a system of parkland, open space and recreational facilities which provide a diverse set of recreational opportunities for existing and future residents."
4. Impact of the proposed development on community facilities: The proposed swimming pool will increase trips to the site, but the impact should be minimal. The neighborhood association will regulate the pool's hours, and access to the facility will be limited to neighborhood residents and their guests, thereby minimizing the need for additional police patrols. With approval of this project, the projected impact on community facilities will be minimal.

CARROLL "This is a Conditional Use to permit a neighborhood swimming pool. It is located on the southwest corner of 127th Street East and Harry. It is largely undeveloped. That is the sign--it says 'site of the future pool'. This site is approximately 2.9 acres, currently zoned 'SF-6' Single-Family. It is part of the Tara Falls Addition. This is pretty typical neighborhood pool. You have been provided a site plan. The site plan shows a 16 x 32 foot swimming pool with 8 parking slots. According to our calculations, you would only be required 6 slots and there is shown to be 8 parking slots on this plan.

One correction I would like to bring to your attention, on Page 2, about the fourth paragraph down, I had said that a variance would be required to permit parking. That should have read 'an Administrative Adjustment will be required to permit parking within the front yard setback'.

One of the objectives in the Comprehensive Plan states 'to develop and maintain a system of parkland, open space and recreational facilities, which provide a diverse set of recreational opportunities'. We feel that this plan meets that, so we are recommending approval with the correction regarding that the Administrative Adjustment would be required. I will stand for any questions that you might have."

CARRAHER "Are there any questions for staff regarding this item? Thank you, Mr. Carroll. Now we will hear from the applicant."

RANDY JOHNSON "I am with Savoy, Ruggles and Bohm, here on behalf of the applicant. Basically, we agree with the revised recommendations of staff."

CARRAHER "Are there any questions of the applicant? Okay, we will move to the gallery. Is there anyone in the audience who is wanting to speak in favor of this item? Is there anyone in the gallery who wishes to speak in opposition to this item? Seeing none, we will move it back to the Commission. What is the pleasure of the Commission?"

MOTION: Having considered the factors contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: The subject property is situated in the middle of a developing residential area. Surrounding properties are all zoned "SF-6." Access to the site is from a residential street. The lot is within walking distance from the surrounding single-family homes, and the off-street parking requirements minimize the number of parked cars on the local street. Small private areas like this are becoming more commonplace in new subdivisions. Extent to which removal of the restrictions will detrimentally affect nearby property. Locating a neighborhood swimming pool along a local street with residential development will introduce more noise for the nearby residential properties. However, this use is limited by definition to subdivision residents and their guests, and the development of the property in accordance with requirements of the Conditional Use will minimize these problems. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The Land Use Guide of the Comprehensive Plan identifies this property as "low density residential." This residential category provides for the lowest density of urban residential land use and consists of traditional, single-family detached homes, zero lot line units and cluster subdivisions, as well as schools, churches and similar uses found in such areas. One of the objectives of the Plan is to "develop and maintain a system of parkland, open space and recreational facilities which provide a diverse set of recreational opportunities for existing and future residents." Impact of the proposed development on community facilities: The proposed swimming pool will increase trips to the site, but the impact should be minimal. The neighborhood association will regulate the pool's hours, and access to the facility will be limited to neighborhood residents and their guests, thereby minimizing the need for additional police patrols. With approval of this project, the projected impact on community facilities will be minimal.) I move that we recommend to the governing body that the request be approved, subject to staff comments.

BARFIELD moved, **GAROFALO** seconded the motion, and it carried unanimously (12-0).

6. **Case No. ZON2000-00052** - Matthias F. Eck (Owner/Applicant); Baughman Company PA c/o Terry Smythe (Agent) request zone change from "SF-6" Single-Family Residential to "LI" Limited Industrial on property described as:

The North 630 feet of that part of the Northeast Quarter of Section 20, Township 26 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas, lying West of the West line of the Atchinson, Topeka, & Santa Fe Railroad right of way, subject to street right of way on the North and west. Generally located on the southwest corner of 53rd Street North and Arkansas.

SCOTT KNEBEL, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

BACKGROUND: The applicant requests a zone change from "SF-6" Single-Family Residential to "LI" Limited Industrial on a 3.6 acre unplatted tract located at the southwest corner of 53rd Street North and Arkansas. The subject property has right-of-way on three sides with Arkansas Avenue to the west, 53rd Street North to the north, and the Atchison, Topeka, and Santa Fe rail line to the east. The applicant proposes to develop the site with industrial uses such as a machine shop. The applicant also has offered a protective overlay to limit the permitted uses on the subject property (see attached).

The surrounding area is characterized by a mixture of commercial/industrial and residential development. The commercial/industrial development is interspersed among residential development along 53rd Street North. The properties east of the site across the railroad tracks are zoned "LI" Limited Industrial and are primarily developed with industrial uses interspersed with several single-family residences. The properties west of the site across Arkansas are zoned "SF-6" Single-Family Residential and "LC" Limited Commercial and are developed with single-family residences and a vacant commercial business. The properties north of the site across 53rd Street North are zoned "SF-6" Single-Family Residential and are developed with single-family residences. The property south of the site is zoned "SF-6" Single Family Residential and is undeveloped. The applicant owns the property south of the site and has indicated an intention to develop the property with single-family residences.

CASE HISTORY: The subject property is unplatted.

ADJACENT ZONING AND LAND USE:

NORTH: "SF-6"	Single-family
SOUTH: "SF-6"	Undeveloped
EAST: "LI"	Industrial, single-family
WEST: "SF-6" & "LC"	Single-family & vacant commercial

PUBLIC SERVICES: The site has access to Arkansas. The site also has frontage along 53rd Street North; however, access is blocked by a utility substation. Arkansas is a two-lane arterial street with traffic volumes of approximately 2,800 vehicles per day. The 2030 Transportation Plan projects that traffic volumes for Arkansas will increase to approximately 3,500 vehicles per day. The projections in the 2030 Transportation Plan assumed that the subject property would develop with single-family residential uses. The "LI" Limited Industrial zoning requested would permit high traffic generating uses such as convenience stores, service stations, drive-thru restaurants, and other auto-related uses. Were the site to develop with these high traffic generating uses, the traffic volumes could increase by as much as 3,600-4,500 vehicles per day.

Municipal water service is available to the site via a 12" water main running parallel to Arkansas. Municipal sewer service is not available to site without extending a sewer main from further south along Arkansas.

Planning staff recommends that the site be platted to address the potential for the site to generate high traffic volumes and the lack of currently available municipal sewer service to serve the site. At the time of platting, planning staff will be recommending right-of-way dedication, dedication of access control, guarantees for traffic improvements, and guarantees for sewer service extension.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the 1999 Update to the Comprehensive Plan identifies this area as appropriate for "Low Density Residential" development. The Industrial Locational Guidelines indicate that industrial development should be located in close proximity to support services and be provided good access to major arterials, city truck routes, belt highways, utility truck lines, rail spurs, airports, and as extensions of existing industrial areas. The Industrial Locational Guidelines also indicate that industrial development generally should be located away from existing or planned residential areas so as not to generate industrial traffic through less intensive land use areas. The request conforms to these locational guidelines since it has access to an arterial street, is located along a rail line, is an extension of the industrial area to the east, will not generate traffic through residential areas, and is recommended for development with site design features that will limit detrimental affects on existing and planned residential development.

RECOMMENDATION: Based upon the information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to platting within one year and the following provisions of a Protective Overlay:

1. The following uses shall not be permitted: correctional facility; correctional placement residence, general; correctional placement residence, limited; cultural group; hospital; recycling collection station, private; recycling collection station, public; recycling processing center; reverse vending machine; airport or airstrip; wireless communication facility; funeral home; heliport; hotel or motel; kennel, boarding/breeding/training; marine facility, recreational; microbrewery; monument sales; night club; pawnshop; recreation and entertainment, indoor; recreation and entertainment, outdoor; secondhand store; tavern and drinking establishment; vehicle and equipment sales; outdoor; vocational school; asphalt or concrete plant, limited; asphalt or concrete plant, general; freight terminal; gas and fuel storage and sales; landfill; mining or quarrying; oil or gas drilling; research services; rock crushing; solid waste incinerator; storage, outdoor; transfer station; vehicle storage yard; wrecking/salvage yard; grain storage; and adult entertainment.
2. The development of this property shall only be permitted if municipally-supplied water and sewer services are provided.
3. A 6 foot high masonry wall shall be constructed adjacent to the south property line. A 15 foot deep landscaped buffer shall be provided along the south property line. The landscaped buffer shall be planted with 1 shade tree or 2 ornamental trees per 30 lineal feet.
4. Light poles shall be limited to a maximum height of 14 feet.
5. Building exteriors shall share uniform architectural character and shall be predominantly earth-tone colors with

vivid colors limited to incidental accent. Extensive use of backlit canopies and neon or fluorescent tube lighting on buildings shall not be permitted.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The surrounding area is characterized by a mixture of commercial/industrial and residential development. The commercial/industrial development is interspersed among residential development along 53rd Street North. The properties east of the site across the railroad tracks are zoned "LI" Limited Industrial are primarily developed with industrial uses interspersed with several single-family residences. The properties west of the site across Arkansas are zoned "SF-6" Single-Family Residential and "LC" Limited Commercial and are developed with single-family residences and a vacant commercial business. The properties north of the site across 53rd Street North are zoned "SF-6" Single-Family Residential and are developed with single-family residences. The property south of the site is zoned "SF-6" Single Family Residential and is undeveloped. The applicant owns the property south of the site and has indicated an intention to develop the property with single-family residences.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "SF-6" Single-Family Residential, which accommodates moderate-density single-family residential development and complementary land uses. Properties at the intersection of arterial streets typically do not develop with single-family uses.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Detrimental affects should be minimized by securing traffic and utility improvements through platting and by the recommended site design features and limitations on permitted uses.
4. Length of time the subject property has remained vacant as zoned: The subject property has remained vacant while the adjacent properties have been developed since the 1950s.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the 1999 Update to the Comprehensive Plan identifies this area as appropriate for "Low Density Residential" development. The Industrial Locational Guidelines indicate that industrial development should be located in close proximity to support services and be provided good access to major arterials, city truck routes, belt highways, utility truck lines, rail spurs, airports, and as extensions of existing industrial areas. The Industrial Locational Guidelines also indicate that industrial development generally should be located away from existing or planned residential areas so as not to generate industrial traffic through less intensive land use areas. The request conforms to these locational guidelines since it has access to an arterial street, is located along a rail line, is an extension of the industrial area to the east, will not generate traffic through residential areas, and is recommended for development with site design features that will limit detrimental affects on existing and planned residential development.
6. Impact of the proposed development on community facilities: Community facilities should not be adversely impacted as long as sufficient right-of-way, access controls, traffic improvements, and utility extensions are provided for through the platting process.

KNEBEL "The applicant proposes to develop this site with industrial uses--the likely possibility is a machine shop or some other type of Limited Industrial use. The applicant has also offered a Protective Overlay, which is attached to the staff report to limit the permitted uses. As you can see by the zoning, the surrounding area has some existing Industrial Zoning. Further to the west, there is some more industrial-type uses that are not shown on this. Across Arkansas Street to the west there is a single-family residence, a vacant commercial building. There are single-family residences to the northwest. To the north are the railroad tracks and the drainage canal. To the northeast is some industrial uses as well as to the east, and to the south is vacant farm ground.

The Limited Industrial zoning requested in addition to permitting industrial development would also permit some high traffic generating uses such as convenience stores, service stations, and drive through restaurants. Those types of uses, were this site to develop with those uses, it would generate a significant increase in traffic over and above the traffic that exists on the two streets today, which are roughly in the 2,500 to 3,500 vehicles per day range. That traffic would likely double were the site to be developed entirely with those types of uses.

In addition to that issue, the site is not currently provided municipal sewer service. The staff report, as it was written, has a recommendation for approval, based on an indication from the applicant that they would be willing to extend sewer service to the site. Since the time the staff report was prepared, the agent for the applicant has contacted his applicant who has indicated that the cost of that sewer extension is too high and he is not willing to bear that. Based on that, it is a significant change in circumstances and staff is changing our recommendation from approval with conditions to a recommendation for denial. This recommendation for denial is based on some changed findings based on the substantial change in circumstances. Those are listed on the memo that I provided to you.

I will go through those briefly. The first is the extent to which the removal will detrimentally affect nearby properties. As some of your are probably aware, the groundwater is already polluted from industrial uses in the area. Permitting industrial development on the site without a sanitary sewer system would further exacerbate that problem. As far as conformance to the Comprehensive Plan, the locational guidelines for industrial uses indicate that they should be located

in close proximity to support services such as sewer and water and those types of uses. The site, without the extension of sewer to it would not be located in close proximity to those support services and therefore does not comply with that locational guideline.

In addition to that, on a site that is not quite on the aerial, located a little bit less than a mile south of here are some municipal water wells that are used for municipal water supply. Permitting industrial development on this site without proper sanitary sewer service; it runs the risk of contaminating that municipal water supply and would have a significant impact on community facilities. Based on those findings, staff is recommending the request be denied."

CARRAHER "Are there any questions for staff regarding the item?"

MCKAY "How far is the Park City sewer plant from here?"

KNEBEL "I don't know the answer to that question specifically. It is probably a little bit closer than the trunk line for the City of Wichita sewer system."

MCKAY "Well, it isn't very far at all."

KNEBEL "Yeah. It may be half a mile."

MCKAY "I think you are just barely missing it there where your 'north' sign is. It is just on the other side of that, I think. Has the applicant been approached on maybe using Park City's sewer line? Or will we not let them use the Park City sewer line?"

KNEBEL "I discussed the extension of sewer service to the site with the agent for the applicant. They agreed that they would be willing to do that. As far as the policies regarding who would provide the sewer service, that is beyond anything that I decide. The absence of sewer service is the thing that concerns us."

WARREN "Scott, is the major purpose in your change of position here from approval to denial having to do with that Protective Overlay? In other words you would stay with your original if the Protective Overlay would remain in place?"

KNEBEL "That is correct. As presented in the staff report."

WARREN "And it is his objection to that Protective Overlay that made the change?"

KNEBEL "The particular condition in there that the site would not develop without sewer service."

WARREN "Okay. And now you are saying he has withdrawn the offer of the Protective Overlay?"

KNEBEL "Well, the only offer of the Protective Overlay was a limitation of uses from the applicant. The other four items were developed by staff, including the issue of extending the sewer service."

CARRAHER "Are there any further questions of staff in regards to this item? Thank you, Mr. Knebel. We will now hear from the applicant."

TERRY SMYTHE "Good afternoon. I am with the Baughman Company, here in behalf of the applicant. When we originally filed this case, we offered the Protective Overlay, which is the uses. There are a variety of uses that we felt was offensive to a lot of areas, and we eliminated them. The issue, I think, that has come up, and the reason why staff's support has been withdrawn is the issue of sanitary sewer.

When myself and the applicant first looked at providing sewer, and I will take the blame for this, I was unaware that the sewer was over a mile south. We thought it was a little closer than that. Rough numbers tell me that it is going to cost over a quarter of a million dollars to get the sewer up to this location. To me, the issue is here, I guess, is we kind of have an infill site. This is a piece of property that has been overlooked for years. We are trying to fill it up with something. Now, how do you do this? A lot of infill sites have water and sewer to the site already.

In this particular case, because it was originally in the county, it developed in the county, all of the uses that are up there are not on municipal sewer system. They all have their own lagoons or septs or some other method of doing it. How do we encourage that kind of infill? Well, it would be nice if this applicant could afford a quarter of a million dollar sewer, run it up there, give it to all of the homeowners, let them hook to the west. They will have some costs themselves, but I think that the issue is a fairness and equity issue. This landowner is willing to join a petition for sanitary sewer. He has the piece of property and you can see it a little bit to the south here (indicating). He has about a 20 to 25 acre site south of here that we are looking at trying to develop residentially. We can't do that without sewer either. I kind of look at it, I guess, from a win/win standpoint. Here we have a landowner that is willing to join a sanitary sewer benefit district, sign today, get his property on board, is willing to pay his fair share of the cost to get sewer up here.

Now, obviously If I was an owner to the west, that would make me nervous, because there is a lot of cost, quite frankly, to hook up to municipal sewer. If I lived up there for years and had a septic or lagoon system that worked fine for my single-family dwelling, I wouldn't be encouraged to join up either, quite frankly. I think the issue is, how do you do it fairly for everybody's benefit. Since the uses today up there are all on their own, so to speak, in terms of sanitary sewer, what I am

offering you, I guess, is the ability to develop this 3.6 acre site with a Sedgwick County approved system, whether that be a pump station that lifts it out or some other kind of lagoon system. Allow them to build that. See if we can generate some momentum up in this area. Some people who want to come up here to help develop this infill piece of property. This landowner has the residential to the south. He is not going to risk that land to the south by trying to slip a little 3.6 acre Limited Industrial site on the north. He needs sewer. He just can't afford a \$250,000 sewer project himself.

What I am offering, I guess, today is that it is a timing matter. You could grant us the zoning today per the original staff report that I agreed to, that we wouldn't develop this site until we had sewer. That may be 5 years from now, it might be never, quite frankly. It depends, I guess, on who is brave enough to stand in front of all of the land owners and say 'let's run a benefit district up here and let's have you pay for it'. I don't know if anybody is that brave to do that. That is one option. He could take this zoning today, agree to the original staff comments and just sit there and bide his time.

Or, two, we could try to encourage this kind of infill property--allow him to try to find a user for the site, subject to the use limitations, build it with a Sedgwick County approved sewer system for that one user and then see if, because of his willingness to run a benefit district sewer petition on his side, if there is enough momentum to maybe encourage the folks to the west to do that. That is a tough sell. I can't disagree with that 100%. If I was over there, it would be a tough sell. When I suggest that now, I am tempted to duck. But if you want people on sanitary sewer, at some time, you've got to bite the bullet. Will the city do it on their own ticket? I don't know. I doubt it, but I don't know. It is kind of like paving the unpaved roads in town. There are a lot of them in town, but nobody wants to pay to get it paved.

So I guess I am offering two different solutions to this. One, grant us the zoning, subject to platting and subject to somebody dragging a sewer a mile away. Give us the zoning and we will just wait and see how long it takes to develop this infill piece of property. Or two, allow us to build with a Sedgwick County or the Health Department approved sewer system and try to get some momentum up here and see if we could encourage sanitary sewer to be pulled up this far.

If there is no real great demand, I don't think you are going to get a whole lot of cooperation of everybody up here to pay more money. I wouldn't. But if you want to get people on a sewer system, at some point in time, you've got to bite the bullet. This applicant is willing to spend some of his money and participate in a benefit district. That is the two options."

HENTZEN "Mr. Smythe, has this property been annexed lately, or has it been in the city for a long time?"

KROUT "It has been in the city about three years."

HENTZEN "Uh, huh. Arkansas Street doesn't go anywhere north of there, does it? It stops."

SMYTHE "It stops at 53rd Street."

HENTZEN "Yeah. You know what looking at this Overlay you offered, it lists 43 items that you have agreed to not let go in there if they let you have this zoning. I have never seen one with that many limitations. I don't know how you feel about it, but I can't imagine that that owner and the next owner and all of them could ever live with that many exemptions from the zoning that you requested. You understand what I am saying?"

SMYTHE "Oh, I understand."

KROUT "The \$250,000 that you quoted. Is that the total cost of bringing the main up to this property and the laterals to serve the property, or is it just to bring the main up to this property?"

SMYTHE "We assume that the sewer was about 37th Street. According to the last sewer maps I looked at, that is about where it stops. I just had one of our engineers look at running a sewer from 37th Street to 53rd Street, kind of like the main. And then everybody else would have hook-up fees. The folks to the west, if you were going to pull them into a benefit district, they would have some laterals going into their back yards--so there would be some additional costs. That is just covering the main. And that is a rough number."

CARAHHER "Are there any further questions of the applicant?"

WARREN "I understand any time you go industrial and you think in terms of a lagoon, you start thinking 'what is going to go into that lagoon'? But in addition to what you have already agreed to restrict yourself from, what can you perceive that the Health Department would be concerned about if we were to approve this with a lagoon and to go ahead and start construction?"

SMYTHE "I think the issue is that anything that is done wrong is a potential problem. If I have a machine shop up there, or say if I have a warehouse district there, and if I have people that don't do things properly, people who are throwing 55 gallon barrels on the ground somewhere, it is a potential problem. It is anywhere you have those issues. I don't believe, with the standards nowadays, and with the applicant owning the property to the south, that that would happen. If everything is done properly, it shouldn't be a problem, in my opinion."

WARREN "Haven't you pretty well restricted those things that would allow for grease or oils or run-offs of that type out of here? Or are you withholding some of those that you would like to have?"

SMYTHE "Well, traditionally a machine shop has the oil and the grease. You need that to manufacture the parts. Those are the things that aren't put down sanitary sewer pipes. If you look at 53rd Street, and it is a very unusual street because you have a very good mix of uses. I don't want to call it the 1950s new urbanism, but you have machine shops, you've got radiator shops, you've got a house, you've got a flower shop. At one time you had a Quik Trip on the corner. It is pretty well a good mix of uses up there, and it seems to do all right. There may be some homeowners out here that will correct me, and I encourage them to do that, but you've got uses that have been there for a long time. As long as I have been in town. They seem to work okay the way they are now. I think with the new health standards in requirements for the lagoons, or whether it is a lagoon or a lift station, I think that that would take care of any potential pollution issue, in my opinion."

KROUT "Have you talked to Park City about extending sewer?"

SMYTHE "No. I just assumed that since it was in the City of Wichita that we were there."

KROUT "I know that when the City of Wichita annexed this area, Park City initially indicated that they were interested in annexing it, but Park City also said, afterwards, that they would be glad to serve this area with sewer. They are always looking for customers. I don't know that the City of Wichita Sewer Department would reject that out of hand because of the distance that 53rd Street is from the newest sewer. I am not saying that they would or wouldn't, but it seems like, at least it is something to explore and it certainly would be less costly for you to extend sewer to the plant."

GAROFALO "Mr. Smythe, does the applicant have a potential use for this at this point, or is this just speculative?"

SMYTHE "The owner is a real estate agent and he has been approached by a number of people looking for a location for a new machine shop. Nothing is definite. He has just had enough feelers that he is looking for a piece of property that would accommodate that, but there is nobody on the line."

CARRAHER "Are there any further questions of the applicant? Thank you, Mr. Smythe. We will now move it to the gallery. Is there anybody in the gallery who wishes to speak in favor of the item? Is there anyone in the gallery who wishes to speak in opposition to the item?"

GENE WILSON "I live at 731 West 49th Street North. This piece of property, right now is a catch-all for water. If they build that up, it is going to flood worse on my property, between 49th and 50th Street on Arkansas. There was twenty inches of water over the whole property the last time we had a big rain, and it all came across the street from that property you are talking about. This 44 acres. But that end of it would have to be filled enormously and there is no industrial on this in the City of Wichita. It is all in Park City. I don't think it is quite right to ask people to get Park City to come over and take their sewer off of the Wichita company. If you want it, get it from the City of Wichita."

CARRAHER "Are there any questions of the speaker? Thank you, Mr. Wilson. Is there anyone else in the gallery who wishes to speak in opposition to this item?"

CHAPMAN MURDIS "I live in the middle of the 40 whatever acres. My house is in that area. I have the farm property there and the farm house. I have three acres in here (indicating). That is my house (indicating) and this encompasses my property."

Like Gene said, the drainage would have to come back this way somewhere if they build that area up. There is nowhere for it to go. It is either going to flood the properties to the west or it is going to have to go back out on 53rd Street. There is nowhere for water to go off of that property, and like Gene said, during the last big rain, it did flood back across that street and head over into some of that addition across the street. There is nowhere for water to go there. It never was planned that way. There is a drainage ditch behind there. Everywhere they are talking about commercial properties or heavy industrial, that is completely behind the drainage ditch. There are the tracks, then a drainage ditch, then the industrial. So I mean that is kind of misleading in the way they are talking about it on the deal there.

This is the same area that they tried to propose a trailer court in there, and I don't know that there isn't some underhandedness in trying to get a sewer up there so they can do that in the future or do something else, you know. But no matter what they do for drainage or sewer, it doesn't have anywhere for water drainage and it has no way to go. It is right where you thought it was, pretty close up there to where that north line is. Not far anyway from the Park City plant. I don't think it is right for them to bring the sewer line over when they are draining Wichita water into it.

I know when they ran the main in there, I had a Park City main there and then they tied it in with the City of Wichita main on water and then they sent me a deal saying it was going to cost me almost \$10,000 because I have so much frontage on that property, to hook onto that main, and I had to do it because they contaminated the water coming down through there. But I ended up tying in on city water anyway. I had just put a new septic system in with infiltrators and a new septic tank at about \$8,000 this year. So I would be one opposed to putting the sewer line up through there because they would have to come through my front yard. That is my stand on it."

MCKAY "Would you point out exactly where your house is?"

MURDIS "Well, it is not pictured on there."

MCKAY "Just go up and point at approximately where your house is."

MURDIS "Well, I would be right down in here (indicating)."

MCKAY "So the 25 acres they have been referring to is just north of your place?"

MURDIS "Straight north, yeah."

BARFIELD "Is your opposition to the development or to the drainage problems there?"

MURDIS "Well, we were trying to get a lagoon, which I think is a little nicer than a septic system. They wanted lots in there for single-family dwellings, and it wasn't good enough for a septic system. I don't know what it is going to do on a lagoon system there either. If you go down 8 feet it is all sand, and if the land is already contaminated, I just don't think lagoons will work either. Because, like you said, the well is on to about a mile to the south there that services Park City and other places."

CARRAHER "Are there any further questions of the speaker? Thank you, Mr. Murdis. Is there anyone else in the gallery who wishes to speak in opposition to this item? Seeing none, the applicant has two minutes for rebuttal if they choose to take it."

SMYTHE "Just a couple of quick comments. Obviously, any time you take a piece of property that is undeveloped and start developing it, you have drainage requirements by the city or the county and you will have requirements for detention ponds if that is what is needed. You will have a lot more cooperation, I think, on trying to get water down along the railroad properties. I guess any time you start developing property, people ask a lot of questions, which is good, and then you start solving some of the issues. As Phil told you earlier, will we solve everybody's problems? No. Hopefully, but I don't see that happening. We will develop under the normal standards that there are today."

Detention requirements, if they are applicable, we will abide by them and when the property around Mr. Murdis develops single-family, the same thing will happen there. We will have some detention requirements that we will have to try to honor and we will honor those requirements. We aren't trying to do anything sneaky. We just understand the potential cost of a sewer system, whether it is for a single family owner or for this tract. It is awful darn expensive for somebody to pay for. And if there is anything that is fair and equitable, it is for everybody to pay for it. We are not encouraging a benefit district to be established. We would agree to be in it because I think, in the long-run, it is beneficial for people to be on sewer systems. But as Mr. Murdis said, and if he spent that much money on his system, I think I would be in his same position myself."

WARREN "Where you are developing this, as I understand it, is somewhat speculative. Would you think that your client might go along with something like if we allowed a lagoon in there that you would be limited with a Protective Overlay to Light Commercial until such time as sewer was available. Then your 'LI' would kick in. Would something like that work?"

SMYTHE "As they say in the (unable to hear) industry, that one has a lot of hair in it. The uses that this applicant is being approached by, I don't believe would be allowed in Limited Commercial zoning."

WARREN "But I think I heard you say I would like to have the Industrial zoning even if we can't use it. I thought I heard you say that."

SMYTHE "I believe my comment was that we would like to have the zoning in place if we can't drag sewer up there. In other words, we would be willing to wait for 5 or 10 years until somebody hits the horse and gets a benefit district for that use up there. We would be willing to wait."

WARREN "All I am saying, though, is instead of waiting 5 or 10 years, you would have a secondary option of land use under Light Commercial, which somebody may come along with that use in mind and you could use your lagoon for that use. I don't care if you want to let it set there for 10 or 12 years. That would be fine."

CARRAHER "Are there any further questions of the applicant? Thank you, Mr. Smythe. We will now move it back to the Commission. Are there any questions or commentary regarding the item?"

WARREN "I think we do need to encourage infill and I think we need to take a look at that piece of land and say we have to give him some right of use to that piece of land. I don't think we can deny all applications. I would hope that we could work out some kind of a compromise where until such time sewer is available, there would be some limited use of that land with a full extent of economic use kicking in when sewer was available. I would hope that we could work something like that out so that we could encourage the infill and encourage maybe some limited use of it now and full use of it at a later time."

GAROFALO "Could I ask Mr. Smythe another question? Mr. Smythe, will you clarify for me and maybe some of the others, are you saying now that you are willing to wait if, say we approve this zoning change with the requirement that nothing be developed until they have sanitary sewer service?"

SMYTHE "Yes, that would be an option. That would be the No. 2 option."

GAROFALO "Well, I understand that. The reason I am asking is because here staff says that your original agreement to that was recanted. Now you are saying that that is an option."

SMYTHE "The recantment part, if that is a word.."

GAROFALO "It is a word."

SMYTHE "It kind of sounds religious, doesn't it? Recantment. The recantment part was the client's inability to pay that much money. I wasn't aware that the sewer was a mile away, so I recanted that part of it, saying that we would not be able to do that."

GAROFALO "That he wouldn't be expected to put it in?"

SMYTHE "Yes."

GAROFALO "Okay. That answered my question."

BARFIELD "Is the Quik-Trip building still standing?"

KNEBEL "The building is still there, it appears that it is being used as some sort of storage building."

BARFIELD "Then I don't quite understand how that corner could have an 'SF-6' zoning."

KNEBEL "The Quik-Trip has Limited Commercial. It is on the southwest corner. The staff report is in error saying it is on the southeast corner."

MCKAY "This piece of property sits right over the Equus beds where we get a lot of our water supply for the City of Wichita. I don't feel very comfortable...I am not opposed to the zoning, but I am opposed to the zoning with a septic tank. The statute is 4.5 acres for single family to have a lagoon and this is 3. something in industrial. I don't care where they get the sewer."

MOTION: Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: The surrounding area is characterized by a mixture of commercial/industrial and residential development. The commercial/industrial development is interspersed among residential development along 53rd Street North. The properties east of the site across the railroad tracks are zoned "LI" Limited Industrial are primarily developed with industrial uses interspersed with several single-family residences. The properties west of the site across Arkansas are zoned "SF-6" Single-Family Residential and "LC" Limited Commercial and are developed with single-family residences and a vacant commercial business. The properties north of the site across 53rd Street North are zoned "SF-6" Single-Family Residential and are developed with single-family residences. The property south of the site is zoned "SF-6" Single Family Residential and is undeveloped. The applicant owns the property south of the site and has indicated an intention to develop the property with single-family residences. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "SF-6" Single-Family Residential, which accommodates moderate-density single-family residential development and complementary land uses. Properties at the intersection of arterial streets typically do not develop with single-family uses. Extent to which removal of the restrictions will detrimentally affect nearby property: Detrimental affects should be minimized by securing traffic and utility improvements through platting and by the recommended site design features and limitations on permitted uses. Length of time the subject property has remained vacant as zoned: The subject property has remained vacant while the adjacent properties have been developed since the 1950s. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the 1999 Update to the Comprehensive Plan identifies this area as appropriate for "Low Density Residential" development. The Industrial Locational Guidelines indicate that industrial development should be located in close proximity to support services and be provided good access to major arterials, city truck routes, belt highways, utility truck lines, rail spurs, airports, and as extensions of existing industrial areas. The Industrial Locational Guidelines also indicate that industrial development generally should be located away from existing or planned residential areas so as not to generate industrial traffic through less intensive land use areas. The request conforms to these locational guidelines since it has access to an arterial street, is located along a rail line, is an extension of the industrial area to the east, will not generate traffic through residential areas, and is recommended for development with site design features that will limit

detrimental affects on existing and planned residential development. Impact of the proposed development on community facilities: Community facilities should not be adversely impacted as long as sufficient right-of-way, access controls, traffic improvements, and utility extensions are provided for through the platting process.) I move that we recommend to the governing body that the request be approved, subject to the following:

APPROVED, subject to platting within one year and the following provisions of Protective Overlay District #85:

1. The following uses shall not be permitted: correctional facility; correctional placement residence, general; correctional placement residence, limited; cultural group; hospital; recycling collection station, private; recycling collection station, public; recycling processing center; reverse vending machine; airport or airstrip; wireless communication facility; funeral home; heliport; hotel or motel; kennel, boarding/breeding/training; marine facility, recreational; microbrewery; monument sales; night club; pawnshop; recreation and entertainment, indoor; recreation and entertainment, outdoor; secondhand store; tavern and drinking establishment; vehicle and equipment sales; outdoor; vocational school; asphalt or concrete plant, limited; asphalt or concrete plant, general; freight terminal; gas and fuel storage and sales; landfill; mining or quarrying; oil or gas drilling; research services; rock crushing; solid waste incinerator; storage, outdoor; transfer station; vehicle storage yard; wrecking/salvage yard; grain storage; and adult entertainment.
2. The development of this property shall only be permitted if municipally-supplied water and sewer services are provided.
3. A 6 foot high masonry wall shall be constructed adjacent to the south property line. A 15 foot deep landscaped buffer shall be provided along the south property line. The landscaped buffer shall be planted with 1 shade tree or 2 ornamental trees per 30 lineal feet.
4. Light poles shall be limited to a maximum height of 14 feet.
5. Building exteriors shall share uniform architectural character and shall be predominantly earth-tone colors with vivid colors limited to incidental accent. Extensive use of backlit canopies and neon or fluorescent tube lighting on buildings shall not be permitted.

MCKAY moved, **GAROFALO** seconded the motion.

WARREN "So that I understand the motion, I think you are saying let's approve the zoning and that the use of the land in support of the building permit would be subject to sewer. I don't think the zoning is subject to sewer. I think the zoning is approved. The ability to build on it is subject to sewer. Is that what I am hearing?"

MCKAY "Right. In other words, they can't do anything with it until the sewer line is there."

WARREN "But the zoning is approved."

MCKAY "I am saying approve the zoning but it can't be used until public sewer is available, regardless of where it comes from."

CARRAHER "Are there further questions or commentary regarding the motion on the floor?"

JOHNSON "These conditions that are in the staff report are also included in that?"

MCKAY "Yes, I am taking the original staff recommendations. That is what I am referring to."

VOTE ON THE MOTION: The motion carried unanimously with 12 votes in favor.

7. **CON2000-00055** - Willard Crigler Sr. (Owner); GF Enterprises c/o Greg Ferris (Contract Purchaser); Horizon Telecommunications, Inc. and Cricket Communications, Inc. (Applicants); Ferris Consulting c/o Greg Ferris (Agent) request a Conditional Use on property described as:

That part of Lot 2, Crigler Addition, Wichita, Sedgwick County, Kansas described as commencing at the S.E. Corner of said Lot 2; thence N 19 degrees 28'46"E, along the southeasterly line of said Lot 2, 264.04 feet; thence N 20 degrees 49'21" W, along the northeasterly line of said Lot 2, 30 feet; thence S 69 degrees 10 '39"W, 15 feet for a place of beginning; thence S69degrees 10'39"W, 50 feet; thence N 20 degrees 49'21"W, 60 feet. thence 69 degrees 10'39"E, feet; thence S 20 degrees 49'21"E, 60 feet to the place of beginning. Generally located north of 24th Street North and east of Gentry.

PLATT "As I have in the past antenna cases, I will step down from this one because of the conflict of interest."

SCOTT KNEBEL, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

BACKGROUND: The owner is seeking a Conditional Use to permit the construction of a 125-foot high monopole tower (see attached elevation rendering) by Horizon Telecommunications, Inc. for use by Cricket Communications, Inc. The proposed site is zoned "SF-6" Single-Family Residential. Wireless Communication Facilities over 65 feet in height in the "SF-6" Single-Family Residential zoning district may be permitted with a Conditional Use.

The proposed tower would be sited on a 3,000 square foot area located north of 24th Street North and east of Gentry on a vacant residential lot. The site plan (attached) depicts a 60-foot by 50-foot compound with the tower located in the center of the compound and the ground-level communication equipment located in the northern portion of the compound. The site plan depicts a chain link fence around the entire compound. The site plan shows that existing trees on the site will be maintained and supplemented by shade trees along the south property line, shade trees north of the compound, and evergreen trees along the northern and southern boundaries of the compound. The site plan shows that access would be provided to the site through an access easement to 24th Street North, a paved local street.

The character of the surrounding area is a single-family neighborhood with complementary land uses such as churches and schools. All of the properties surrounding the site are zoned "SF-6" Single-Family Residential, and they are primarily developed with a single-family residences. The property immediately north of the site is developed with a church, and the property immediately east of the site is undeveloped and contains a heavily wooded creek bed.

The application indicates that the proposed tower is needed for part of a planned initial build-out of a wireless phone system by Cricket Communications, Inc. (see attached RF engineering evaluation). The design of the phone system was based on utilizing or modifying/rebuilding existing towers at school sites, hence the name "Brooks" for the proposed site on the RF engineering evaluation. It has been well documented at past MAPC hearings that the applicant has been unsuccessful at reaching an agreement with the school district to locate their facilities on school property in a time frame that meets the applicant's build-out schedule. However, the school district continues to maintain that they are working towards a resolution of the outstanding issues to eventually allow the applicant's (and others') facilities on school property.

The justification for the request (attached) indicates that there are no tall structures in the area and that the only tower within one mile of the site is a school district tower at Brooks Middle School; however, this statement is not accurate. In addition to the tower at Brooks Middle School, there are four commercial towers (two northeast of 21st and Oliver, one at WSU Police, and one at KMWU), a water tower (at WSU), and two stadiums (WSU football and baseball) with tall light and flag poles within one mile of the site. The Wireless Communication Master Plan states that the applicant must demonstrate through documentation such as propagation plots and/or other materials that existing facilities cannot be utilized or modified/rebuilt; however, the application does not include any documentation regarding the potential for utilizing or modifying/rebuilding any existing sites rather than constructing a new tower. Instead, the application indicates that the existing sites do not exist, which seems to indicate that there has been a less than complete effort to co-locate.

While the Wireless Communication Master Plan encourages co-location, it also indicates that in some cases one taller support structure may present a greater visual impact than several shorter support structures. In the opinion of planning staff, locating a tall structure such as the proposed 125-foot high tower in the middle of a residential neighborhood is an instance when several shorter structures should be considered rather than a single tall structure. For instance, if co-location opportunities on existing structures to the south are only available at lower heights, then the co-location site could be supplemented with a new ground-mounted facility at a lower height (such as 65 feet) and, if necessary, with an additional co-location at existing sites to the north and east. Such an arrangement would significantly reduce the visual impact on the residential neighborhood surrounding the subject property in comparison to the proposed 125-foot high tower.

In addition to the issue of co-location, the applicant has proposed that a 125-foot high tower be located in the middle of a residential neighborhood with the only explanation being that sites north of the area were evaluated and could not provide handoffs to other sites to the south. The application does not indicate which sites north of the area were evaluated; however, there is a significant amount of undeveloped land (much of which is heavily wooded) located several blocks north of the subject property that is on the edge of residential development with residences located only to the south rather than completely surrounding the site like the subject property.

CASE HISTORY: The site is platted as the Crigler Addition, which was recorded on April 10, 1996.

ADJACENT ZONING AND LAND USE:

NORTH:	"SF-6"	Church
SOUTH:	"SF-6"	Single-Family
EAST:	"SF-6"	Undeveloped
WEST:	"SF-6"	Single-Family

PUBLIC SERVICES: No municipally supplied utility services are required. Access to the site is proposed through an access easement to 24th Street North, a paved local street.

CONFORMANCE TO PLANS/POLICIES: The Wireless Communication Master Plan is an element of the Comprehensive Plan that outlines the guidelines for locating wireless communication facilities. The Location Guidelines

of the Wireless Communication Master Plan indicate that new facilities should be located: 1) on multi-story buildings or other structures; 2) on existing poles in street rights-of-way, parking lots, or athletic fields; 3) on existing towers for personal wireless services, AM/FM radio, television, school district microwave antennas, and private dispatch systems; 4) in wooded areas; 5) on identified city and county properties; or 6) on highway light standards, sign structures, and electrical support structures. The Design Guidelines of the Wireless Communication Master Plan indicate that new facilities should: 1) preserve the pre-existing character of the area; 2) minimize the height, mass, or proportion; 3) minimize the silhouette; 4) use colors, textures, and materials that blend in with the existing environment; 5) be concealed or disguised as a flagpole, clock tower, or church steeple; 6) be placed in areas where trees and/or buildings obscure some or all of the facility; 7) be placed on walls or roofs of buildings; 8) be screened through landscaping, walls, and/or fencing; and 9) not use strobe lighting. The Unified Zoning Code requires wireless communication facilities to comply with a compatibility height standard of one foot of setback for each foot of structure height from adjoining properties zoned "TF-3" or more restrictive. This compatibility height standard can be reduced or waived through a Conditional Use or a Zoning Adjustment.

RECOMMENDATION: Planning staff finds that the proposed wireless communication facility does not conform to the guidelines of the Wireless Communication Master Plan.

First, the proposed facility does not utilize existing towers or other tall structures in the area. No radio frequency analyses or other documentation have been provided to substantiate that co-location on existing towers or other tall structures is not feasible. Approving a new tower to be constructed at the proposed location would lead to an unnecessary proliferation of towers in the area.

Second, the proposed facility does not preserve the pre-existing character of the area. Planning staff reviewed the locations of existing towers in the community and could not locate a commercial tower that is located in the middle of a residential neighborhood. Other commercial towers in the community are located completely outside residential neighborhoods or on the edge of residential neighborhoods where they border commercial/industrial or undeveloped property. Even the towers located on school properties tend to be located on the edge of residential neighborhoods, and when they are located in the middle of residential neighborhoods, they are located in open areas that are significantly larger than the subject property. Approving a new tower to be constructed at the proposed location would detrimentally affect the surrounding residential neighborhood and discourage residential infill in a neighborhood identified by the Comprehensive Plan as a "Conservation" neighborhood that needs to be protected from future market value decline.

Third, the proposed facility does not minimize the height, mass, or proportion of the facility. The Wireless Communication Master Plan indicates that in some cases one taller support structure may present a greater visual impact than several shorter support structures. Locating the proposed 125-foot high tower in the middle of a residential neighborhood will have a significant visual impact on the neighborhood that could be avoided by reducing the height, mass, and proportion of the proposed facility by using it in combination with co-location on existing towers or other tall structures in the area.

Finally, the proposed 125-foot high facility does not conform to the compatibility height standard since it is proposed to be setback only 40 feet from property zoned "SF-6" located east of the site and only 110 feet from property zoned "SF-6" located west of the site. The application states that the tower could have been placed on the property in compliance with the compatibility height standard but that the proposed site was chosen to take advantage of a heavy buffering of trees along the east property line. In reviewing the site plan, planning staff cannot find a location on the subject property where a 125-foot tower could be located to comply with the compatibility height standard. While planning staff agrees that if a tower is to be approved for the site the proposed location of the tower is better than locating the tower in the middle of the property, the inability of the site to meet the compatibility height standard is a strong indication that the subject property is inappropriate for a tower at the height requested.

Based upon these factors and the information available prior to the public hearings, planning staff recommends that the request be DENIED; however, if the MAPC finds the request appropriate, Planning staff recommends that the MAPC make appropriate findings and that approval be subject to the following conditions:

- A. All requirements of Section III.D.6.g. of the Unified Zoning Code shall be met.
- B. The applicant shall obtain all permits necessary to construct the wireless communication facility, and the wireless communication facility shall be erected within one year of approval of the Conditional Use by the MAPC or governing body, as applicable.
- C. The support structure shall be a "monopole" design that is silver or gray or a similar unobtrusive color with a matte finish to minimize glare.
- D. The monopole shall not exceed 125 feet in height and shall be designed and constructed to accommodate communication equipment for at least three wireless service providers.
- E. The monopole and its foundation shall be designed and constructed in such a manner that permits future height extensions of up to 25% of the structure height and future loading expansions to accommodate communication equipment for at least four wireless service providers.
- F. A landscape plan shall be submitted for approval by the Planning Director that maintains the existing trees on the parent tract and provides three 4" caliper shade trees to be planted and maintained north of the compound, three 4" caliper shade trees to be planted and maintained along the south property line of the parent tract, and densely planted evergreens to be planted and maintained along the north and south sides of the compound.
- G. Revised site plans and elevation drawings indicating the approved location and design of the wireless communication facility shall be submitted for approval by the Planning Director within 60 days of approval of the Conditional Use by the MAPC or governing body, as applicable.

- H. The site shall be developed in general conformance with the approved site plans and elevation drawings. All improvements shall be completed before the facility becomes operational.
- I. The applicant shall obtain FAA approval of the proposed wireless communication facility and shall comply with all conditions of FAA approval. The applicant shall submit a copy of FAA approval to the Director of Airport Engineering for the City of Wichita.
- J. The site shall be developed and operated in compliance with all federal, state, and local rules and regulations.
- K. Any violation of the conditions of approval shall render the Conditional Use null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The character of the surrounding area is a single-family neighborhood with complementary land uses such as churches and schools. All of the properties surrounding the site are zoned "SF-6" Single-Family Residential, and they are primarily developed with a single-family residences. A tower in the middle of this residential neighborhood would discourage residential infill in a neighborhood identified by the Comprehensive Plan as a "Conservation" neighborhood that needs to be protected from future market value decline.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "SF-6" Single Family Residential, which accommodates moderate-density, single-family residential development and complementary land uses. The site has been platted as a residential lot and is served by utilities and a paved street. The site is suitable for development with a single-family residence and there is even sufficient vacant land around the site to develop the site with a complementary land use. Wireless communication facilities in excess of 65 feet in height in the "SF-6" Single-Family Residential zoning district may be permitted as a Conditional Use, but typically should conform to the guidelines of the Wireless Communication Master Plan. The proposed wireless community facility does not conform to the guidelines of the Wireless Communication Master Plan
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The proposed wireless communication facility would be located in the middle of a residential neighborhood with single-family residences and complementary land uses completing surrounding the site. The visual impact on the surrounding neighborhood would have significant detrimental impacts on the nearby properties. No residential neighborhood in the community has a commercial tower located in the middle of the neighborhood due to the detrimental affects of the visual impact of towers.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The proposed wireless communication facility does not conform to the guidelines of the Wireless Communication Master Plan. First, the proposed facility does not utilize existing towers or other tall structures in the area. No radio frequency analyses or other documentation have been provided to substantiate that co-location on existing towers or other tall structures is not feasible. Approving a new tower to be constructed at the proposed location would lead to an unnecessary proliferation of towers in the area. Second, the proposed facility does not preserve the pre-existing character of the area. Planning staff reviewed the locations of existing towers in the community and could not locate a commercial tower that is located in the middle of a residential neighborhood. Other commercial towers in the community are located completely outside residential neighborhoods or on the edge of residential neighborhoods where the border commercial/industrial or undeveloped property. Approving a new tower to be constructed at the proposed location would detrimentally affect the surrounding residential neighborhood and discourage residential infill in a neighborhood identified by the Comprehensive Plan as a "Conservation" neighborhood that needs to be protected from future market value decline. Third, the proposed facility does not minimize the height, mass, or proportion of the facility. The Wireless Communication Master Plan indicates that in some cases one taller support structure may present a greater visual impact than several shorter support structures. Locating the proposed 125-foot high tower in the middle of a residential neighborhood will have a significant visual impact on the neighborhood that could be avoided by reducing the height, mass, and proportion of the proposed facility by using it in combination with co-location on existing towers or other tall structures in the area. Finally, the proposed 125-foot high facility does not conform to the compatibility height standard since it is proposed to be setback only 40 feet from property zoned "SF-6" located east of the site and only 110 feet from property zoned "SF-6" located west of the site. The application states that the tower could have been placed on the property in compliance with the compatibility height standard but that the proposed site was chosen to take advantage of a heavy buffering of trees along the east property line. In reviewing the site plan, planning staff cannot find a location on the subject property where a 125-foot tower could be located to comply with the compatibility height standard. While planning staff agrees that if a tower is to be approved for the site the proposed location of the tower is better than locating the tower in the middle of the property, the inability of the site to meet the compatibility height standard is a strong indication that the subject property is inappropriate for a tower at the height requested.
5. Impact of the proposed development on community facilities: Access to the site is proposed to be from 24th Street North, an unpaved local street, which would lead to an increase in commercial traffic on a residential street.

KNEBEL "This is a request for a Conditional Use to permit the construction of a 125-foot high monopole tower. The tower would be constructed by Horizon Telecommunications and would be used by Cricket Communications, the same companies that you have seen on several tower requests in the past couple of months. The proposed site is zoned 'SF-6'

Single-family residential. That district permits communication towers up to 65 feet in height with administrative approval. They can also be approved in the 'SF-6' zoning district with a Conditional Use. You can see here (indicating) that the immediate area is undeveloped, surrounding it is developed nearly entirely with single-family homes.

The applicant has indicated that the only tower in the area is at Brooks Middle School. As you can see (indicating) this is the proposed location here and this is Brooks Middle School, which this site is an alternative to. These other yellow dots located to the south are other areas that are located within 1 mile of the application site. The application itself indicates that there were no sites within 1 mile; however, that is not an accurate statement as you can see by the facilities shown.

The Wireless Communication Master Plan states that the applicant must demonstrate that existing facilities cannot be modified or rebuilt. In this particular instance, the application states that there are no other alternatives. As I mentioned previously, we think that statement is in error, and we think there should have been additional information provided as to why these additional facilities are not usable for the antennas that are proposed at the subject property. The Wireless Communication Master Plan also mentions that in some cases, taller support structures may present a greater visual impact than several shorter structures. In the opinion of the Planning staff, when you locate a tower in the heart of a residential neighborhood as proposed in this instance, I think that that clause in the plan should apply in that sort of instance. We have indicated that perhaps a shorter tower, such as the 65 feet that is permitted with administrative approval could be used in combination with locating antennas on some of the other sites that were indicated rather than constructing just a single tall tower right in the middle of the residential neighborhood.

In addition to that, there is this land in this location here (indicating), which is just as close if not closer to the original site for the proposed tower that is on the edge of residential development rather than in the center of it. In reviewing the other uses of towers throughout the community, we cannot find another instance where a tower had been constructed other than perhaps a school tower on a very large school site right in the heart of a residential neighborhood. So we think there should have been some documentation provided as to why the areas to the north were not usable. There was a statement made that they were not usable, but there was no documentation to support that statement.

The Planning staff has found four reasons that we feel that this does not conform to the guidelines of the Comprehensive Plan. We have basically gone over them but I will summarize them for you quickly. The first one is that it does not utilize existing towers in the area or other tall structures in the area. It does not preserve the pre-existing character of the neighborhood. As I mentioned before, there is no other area that we could find where commercial communication monopoles located in the heart of a residential neighborhood as is proposed here. We think that would severely change the character of that neighborhood. The site does not minimize the height, mass, or proportion of the facility. As I talked about earlier, the plan does discuss, in certain visually sensitive areas, that multiple shorter towers should be used rather than a single tall tower. That proposal was not explored by the applicant. And finally, the site does not conform to the compatibility height standard.

You can see here (indicating) this single-family lot right here and the tower is located within 40 feet of it. It is located within 100 feet of this (indicating). We think that the fact that you can't find a place on this lot, at least I couldn't, and maybe the applicant can show me something that I missed, that conforms with that compatibility height standard that that is a strong indication that this site is not appropriate for a tower of the height that is requested. Based on that, we are recommending the request for denial. However, if the Planning Commission finds that the request is appropriate, staff recommends that the Planning Commission make the appropriate findings and that the approval be subject to the following conditions:

That the tower be erected within 1 year; that it be a monopole; that it be 125 feet in height and be able to handle 3 carriers; that it be able to be extended by 25% of its height and add an additional carrier; that a landscape plan be provided to provide additional screening over and above what is provided by the existing trees on the site; and that the site be approved by the FAA. With that, I will conclude my remarks and answer any questions."

BARFIELD "The area that you showed up north, how much further north is there?"

KNEBEL "It is up by, I believe 27th Street, so it would be 3 or 4 blocks north. (Indicating) This is the location that the recommendation is for now. You have about half a block there, another block. So I guess it is about 2-1/2 or 3 blocks north."

MCKAY "How far is it to the nearest house? I didn't see a house in any of those pictures. That is why I was asking."

KNEBEL "The nearest houses are located around the site here."

MCKAY "How far?"

KNEBEL "I would say that the nearest house is probably 350 feet."

MCKAY "Okay, thank you."

BARFIELD "How far is the church?"

KNEBEL "The church is a little bit closer than that...maybe 250 to 300 feet."

CARRAHER "Are there any further questions? Thank you, Mr. Knebel. Now we will hear from the applicant."

GREG FERRIS "Mr. Chair, members of the Planning Commission, I represent the property owner Horizon Telecommunications and Cricket Communications on this application. I think Scott made a good presentation. There are a couple of things in the staff report. I am pretty well going to follow that letter that I gave you, and that way if you have any questions, it will give you something to refer back to.

I think there are several points that need to be clarified. First of all, Cricket has made a serious attempt to limit heights for all of its facilities while maximizing coverage. This creates towers that are approximately 2 miles apart in the urban area. You can build them a little taller and get a little further apart, but you lose some capacity when you do that and they have worked real hard on this grid to try and make sure that they have limited the number of new facilities. That isn't just towers, that is any facility, rooftops on which we have done some co-locations, which we do as well.

When you start moving towers as much as half a mile, what you do is you leave gaps and you create double coverage in areas. What ends up happening is that you have to build more than one tower or two towers without necessarily gaining any shorter towers. In fact, in this area here, to try and cover the area to the north and the east, a shorter tower wouldn't be adequate to do that, so you would basically be looking at another site and maybe two sites, which I will go into in a little bit more detail in a minute.

Staff is correct about the error on my application. I apologize for that. The tower at the WSU police station is just short of 3/4 of a mile from this site. The rest of the towers are almost exactly 1 mile from this area. We don't really consider those in the area and that is what I specified in the report because these towers are actually closer. The tower to the south at WSU they identified is actually closer to the McDonald tower than it is to this site. He is correct, I tried to produce some RF stuff that would have really confused me, so instead of producing a whole bunch of plots, I brought the RF Engineer and he is going to make a short presentation and then he will be available to answer questions to deal a little bit more with why they don't put towers that close to each other in a CDMA system. But what happens, in general, is that a coverage overlap occurs and you basically lose capacity. So what ends up happening is you have to build not just the coverage sites but capacity sites. But I am going to let him explain that a little bit more and if you have further questions, I understand it, I think, and I will be able to maybe offer some things.

The site at 21st and Oliver is considerably east of Oliver. It is nearly 2 miles from I-135. It really creates a major coverage issue. As I said, the KMWU tower is actually closer to the McDonald golf course, and it is only a mile and a quarter from the 17th and Matthewson area. Staff has identified the property north of Brooks. We discussed that a little and we have actually gone out and part of it we had identified earlier and tried to secure. The landlord was not interested. The property that Scott referred me to, the property owner has not expressed any interest whatsoever in leasing us. His property is not available, so we can't put a tower there, they won't let us. So that creates a little bit of issues.

So basically where do we end up, if we start moving these things around, and we are not talking moving them a quarter of a mile or a little bit, we are talking about moving them over half a mile. You end up having to try to redesign an entire system. When you move a tower outside of where radio frequency engineers tell you that that is where you should go, and then you start multiply the number of towers. In this case, to get the coverage that staff is recommending, we would need probably 3 facilities. Not necessarily 3 new towers, but 3 facilities to cover one. If this standard were applied throughout the community, you would be looking at anywhere from 80 to 100 new facilities versus 40. Not just would some of those be new towers that I would have to be standing here trying to zone, and unfortunately they don't pay me per tower, and that might be a good deal if I was getting paid that way, but it also is very, very expensive. Each one of those towers is between \$200,000 and \$400,000 and can create an enormous opportunity for expense.

I believe this property does comply with the Wireless Master Plan. It is significant. There isn't a single structure within 200 feet of this tower. It is probably closer to 300, Mr. McKay, to the nearest house, not 350 and it is probably about 270 to the church, Mr. Barfield, to answer your question. The tower is short compared to most towers. The most you have heard from us is 140 or 150. We have limited the height of this tower because of its location. In a construction build-out, a 120-foot tower would be considered very short. It is a monopole; it is minimized as silhouette. We are adding significant landscaping to this area. It is buffered on the north and west by unplatted church property. It is buffered on the east by a heavily wooded area, which is one of the requirements in the Comprehensive Plan. It is buffered on the east by the drainage and on the west, the applicant actually owns the property that is the lot to the west as well, not just the one lot that this sits on.

In referring to the golden rules, this property has been vacant for a long, long time, and it has been on the market for a substantial period of time without any interested buyers. There is nothing or anywhere that shows the towers have negative impact on residential surrounding properties. The fact is that there are numerous towers. While they may not be entirely encompassed within residential property, although I think many of the school sites are small sites--Kelly, Little--that are surrounded by residential properties and are in very small areas. Smaller even, than the applicant's ownership. There is a tower at Central and Maize that is right on the back yard of a high-end residential area. It has had no problems with value in that area. There is a tower at Maple and Tyler and south of Central and Maize that are also quite close to high-end dwelling units. These are actually where property values are escalating.

While the land is suitable--I will not argue that with you--for residential uses, no one has expressed any interest in developing those uses for a long, long time. I believe staff has erroneously suggested that this will have a negative impact on community facilities. Communication towers generate between 3 and 4 trips a month. You will have more traffic in that area fixing washers and dryers than you will have servicing this tower. Certainly there will be commercial

traffic during construction, but if you were to build a single-family house here, you would have commercial traffic for anywhere from 2 to 4 months where this commercial tower would be constructed in 2 to 3 weeks.

We believe this is an appropriate site. Does it meet every criteria of the Master Plan? No. I have not yet seen one that does. However, is this a good site? I believe it is. It is heavily wooded. It is a great distance from residential property that is being used as residential property. It is well buffered and I believe we have demonstrated a need. We will let the RF Engineer address the more specific questions that Scott may have. I would be glad to answer any questions that you might have at this time."

CARRAHER "Are there any questions of the applicant? Thank you, Mr. Ferris. "

MARNELL "I just wanted to state, for the record, that Mr. Ferris had contacted me on this and inquired whether I had looked at it. The only conversation I had with him before reading the staff report was whether I had looked at the WSU property."

KROUT "You might ask if there was any others."

CARRAHER "Are there any others who wish to express any ex parte contacts? Okay, sir, the floor is yours."

JASWINDER SINGH "I am a radio frequency engineer with Lucent, working on a Cricket project here. I would like to share some technical aspects and pointers regarding wireless communication facility placement and how they work. There are these communication possibilities which (unable to decipher). They should be a good distance from each other. Not so close, not so far. Each tower has three sectors pointing (unable to decipher) to a degree. So in each direction, we have three sectors.

If two towers are very close to each other (unable to decipher) and two sectors are pointing toward some media and there is some overlap in that area. This is CDMA technology, which is very confusing. In this technology, if a person from that overlapping area would make a call, he will reconnect to both towers. So he will be using two traffic channels. So double (unable to decipher) will be used in that case. So, we don't want the sites to be too close. If we see the (unable to decipher) in Wichita.

We do all of this prediction on software tools, which is fully tuned with this (unable to decipher) with this (unable to decipher). (Unable to decipher) around two miles. Somewhere it is less than two miles, somewhere it is more than two miles."

CARRAHER "Sir, your time has expired. I would like to open the floor to give the speaker an additional two minutes."

MOTION: That the speaker's time be extended for two minutes.

MCKAY moved, **WARNER** seconded the motion and it carried unanimously.

SINGH "Thanks. So, if the two (unable to decipher) are not far enough, then there will be a gap within the coverage. I'm sorry, my English is not too good. So because of that coverage hole there will be problems. If one person is going from this side to this side, he will not be able to continue his call. The call will be dropped, originations will be (unable to decipher). So the quality of the service will be poor. That is why, in this case, we have examined the WSU tower, the WSU light pole, and then the Southwestern Bell tower, which is on 21st Street. This is the best location, where we are proposing. It is an appropriate location for this site from our point of view."

CARRAHER "Are there any questions of the speaker? Thank you, sir. Now, we will move it to the gallery. Is there anyone in the gallery who wishes to speak in favor of the item? Is there anyone in the gallery who wishes to speak in opposition to the item?"

MAN FROM THE AUDIENCE "How long do we get to speak?"

CARRAHER "Five minutes. How many people are wishing to speak in opposition? Okay. Looks like four. Thank you."

SAM CRISS "I live at 4138 East 24th Street. If I may, I will point out where that is. (Indicating) I live right here. I also own this land (indicating). We do have several people from the neighborhood who are here. What happened was that there was a sign put up a few weeks ago that said something like 'sale pending and zoning change proposed'. It had a telephone number on it. Then last week, that blew away. Or, I don't know what happened to it. I finally called the number yesterday and discovered that today there is a hearing on it. I am very glad I did. None of us who live right around it received anything written about it. I don't know why that is.

(Indicating) The family who lives right here received no notice, and there is also a house here which doesn't show up. The church, I have no idea on. I am a clergyman, but I have nothing to do with St. Andrews Missionary Baptist Church, which is that church. I am not representing them or speaking for them. That is how I got here. What I did was to call a few of the neighbors and say 'they are going to put a tower up and we need to go to the hearing'.

I understand that what was said about that it is easier from the point of view of Cricket to put the tower where they are want to put it. I assume that is true. I also understand why no one else was willing to have the tower built. Basically we

feel that the building of this tower interferes with and degrades the character of our neighborhood. We want to see another house built there. It is true that nobody has bought a house--I think the last time that property changed hands was in 1996. I assume that that was when the present owner got it. But it was for sale for some time before that. It originally belonged to another church that wanted to put a church in there and for whatever reason, they were simply not able to make it financially so they were faced with selling the land.

One of the things that struck me in the staff report was the discussion about undeveloped land. That land is developed. I speak as the one who mows right down to that line and that is a lot of mowing. I guess you could say, if one's yard doesn't have a building on it, it isn't developed, but it seems developed to those of us who mow. We would just as soon there weren't any tower there. If the tower goes in, I am going to have sit on my back porch and contemplate that thing for the rest of my life. Also, it will prevent a house being built in there. We think there is room for a single-family dwelling and we hope that someday somebody will buy that and build one. That is all I have to say."

CARRAHER "Are there any questions of the speaker?"

LOPEZ "You indicated you owned the property to the left of the property you live on. Do you plan to develop that property at all?"

CRISS "No. We use that for a yard."

LOPEZ "Where is the church?"

CRISS (Indicating) "Up here."

LOPEZ "Okay, thank you."

CARRAHER "Are there any further questions of the speaker? Thank you, sir. Is there anyone else in the gallery who wishes to speak in opposition to the item?"

DICK WILLIAMS "I live at 4228 Northeast 24th Street. I will point the lot out to you. (Indicating) It is right here. There are many reasons why we don't want this in our neighborhood. One is health reasons. For one thing, I think a high wind could very well wind up this tower on my house. But there are other health reasons I would like to bring up as well. We already talked about aesthetic reasons and the value of property, etc., but I do have a couple of written things here, which I will leave with you, for the record. One is a fax sheet from Ohio State University entitled 'Are Electro-magnetic fields hazardous to your health?'."

Quite frankly, I think it is outrageous that anyone would propose creating this kind of an electro-magnetic field in a residential district where people and children are involved. This fact sheet on Ohio State University is very useful and it gives some basic definitions, etc., but let me read just the conclusion to this: 'No scientific data support definitive answers to questions about the existence or non-existence of health risks related to electro-magnetic fields. More research to release more reliable information is needed before any conclusions can be drawn'. This means that basically we don't know what the health effects of such a tower would be. It is not that health investigations have been made and nothing has been turned up, the situation is that to get reliable conclusions in this field will take a number of years. So no investigations have been concluded and there are some plausible mechanisms by which electro-magnetic fields could, in fact, be very dangerous.

This item is brought out in my second paper here, which is from the World Congress on Medicine and Health, I believe in Geneva last July and August. I would like to leave both of these items for you to look at. There are other things as well, which of course, you can find for yourself. But as long as the jury is out on this and as long as there is a very plausible and potential danger to the health of human beings, I think that such an electro-magnetic field in our neighborhood is not wise. Thank you."

CARRAHER "Are there any questions of the speaker?"

HENTZEN "Mr. Williams, we have been having hearings and working on the Wireless Master Plan and things like that, and you have used the words 'electro-magnetic fields'. That is the first time we have heard that. Are you confident that these type of things produce electro-magnetic fields?"

WILLIAMS "Yes."

HENTZEN "Is it in anything that you are passing out there?"

WILLIAMS "Yes."

HENTZEN "Okay."

CARRAHER "Are there any further questions for the speaker? Mr. Williams, if you would like to submit those for the record. You can hand them to Mr. Miller and he will pass them down. I want to thank you for speaking. Is there anyone in the gallery who wishes to speak in opposition to the item?"

GLEN DEY "I live at 4515 Greenbriar. I am not in close proximity, but I would rise in support of the staff recommendation, primarily in terms that I think there is opportunity, through the use of facilities of USD 259, and also Wichita State University, in order to have disguised polls in order to accomplish the same thing without going into a neighborhood. Primarily, we are on the north side of WSU and one of our rolls has been to anchor the north side of WSU so that that neighborhood does not deteriorate.

We already have impact from the baseball area, in which our neighborhoods are crowded and in which people will park in the area rather than use the other, and I would propose that one possibility be explored, and I have not heard this, is that you could have a disguised pole on Rusty Eck Stadium which would accomplish the same thing. Going to the east 1 mile, in almost all of these other areas, they are located in what is commercial zoning area in which the individuals benefit from the fact of having that placed in their neighborhood. No one is going to benefit here, other than the property owner, who is trying to utilize this.

If we are looking at coverage for I-235 and for the Canal Route, the district site at the northeast magnet would be one that seems that those could be worked out together, so I would just simply support that fact. I have not heard that there are any other carriers that are saying that they do not have coverage in that area. I have a cell phone right here from another particular one and I have excellent coverage in that area. I see no additional reason for locating it in this particular area. In order to sustain the spirit under which we discussed these things because we had raised in the discussion about this particular approach in terms of having poles, that there are alternative routes by which, if you have lower coverage that you can place little sites on telephone poles, hidden areas like that to pick up where you have double coverage. So there are alternative ways of addressing this. Those are the statements that I have made in support of the staff recommendation."

CARRAHER "Are there questions of the speaker? Thank you, Mr. Dey. Is there anyone else in the gallery who wishes to speak in opposition to this item?"

SUZANNE GROSS REED "I live at 3917 East 24th Street North. I look, when I am doing the dishes, entertaining friends, I look there. I don't want to look at this tower. There is no amount of cosmetic chicanery that is going to make the tower more acceptable in this neighborhood. I do not think that the opportunity for the applicant to increase company profits is more important than the quality of life in a so far undegraded neighborhood. We like it there. We share it with many birds and animals that have been driven out of other places, and we would like to keep it as pleasant, as friendly, as clean as it has become. It has become so because the residents for all of the 32 years that we have lived there have worked very hard to make it so.

I object to the presence of the tower, and I object to almost all of the statements that I have heard today. They are all geared toward making it easy for a business which provides a definitely non-essential technological luxury. Thank you."

CARRAHER "Are there any questions of the speaker? Thank you, ma'am. Is there anyone else in the gallery who wishes to speak in opposition?"

JAMES ROSEBORO "I live at 45618 Greenbriar. I am President of the Northeast Heights Neighborhood Association. On behalf of the residents surrounding this proposed tower here, I am here this afternoon to speak on their behalf and to put some things forth that have not been brought forth here today.

I apologize to you. We did try to get in touch with the church on a short-time notice. We know because we were in contact with somebody, that the church wasn't notified of this. They didn't know about this tower coming in. In the distance of the houses and some of the things that have been proposed, I think that needs to be challenged just a little bit, too. The traffic amount on 24th Street, Gentry and those streets isn't geared to heavy vehicles. The dry creek bed that is just to the east of what is proposed there, what they are going to build will keep that creek bed clean and open for the flow of water through there. Now with a fence and a base there, this could attract garbage and debris that is going to go back up to that creek, and that would be a proposal.

Second of all, the people concerned about their property values. No place else in Wichita that I know of has a 125-foot tower in any residential area. The houses there are really close. That property is kept up right now. Again, the people are concerned about what will happen when this thing rolls on. It is a business and it is going to die sooner or later. Will this be another eye sore for the community to look at? The neighbors who have valuable homes, and the homes in that area are pretty valuable. This is no place, I would think, for a tower. At this time, I am going to be quiet. I am just speaking on behalf of the residents. They do not want it."

CARRAHER "Okay. Are there any questions of the speaker? Thank you, Mr. Roseboro. Is there anyone else in the gallery who wishes to speak in opposition to the item?"

DIANNA WILLIAMS "I live at 4228 East 24th Street, which is here (indicating). It is really just an added point to what my husband made about the electric magnetic fields. I would like to make the point that the World Health Organization and the National Institute of Health have both urged caution in putting these magnetic and electric fields in residential areas. The long-term health effects are unknown and there needs to be more research before we go that route. Thank you."

CARRAHER "Are there any questions for the speaker? Thank you, Mrs. Williams. Is there anyone else who wishes to speak in opposition?"

BETH CRISS "I live at 4138 East 24th Street North. I live in the house that is next door. It has been stated that somehow it doesn't matter that I live next door because I have a big side yard and it is a number of feet away. But I live next door to where the tower would be. I am very concerned about the tower--the health things--and also the aesthetics of it. It says that they plan to put a chain link fence that would catch garbage and look awful, and of course that wouldn't even begin to do anything to the height of this tower right in the middle of where people live.

I was somewhat startled to hear that we don't live in WSU's neighborhood. I think 4 or 5 of the speakers have taught at WSU and got their homes there so that we would be in WSU's neighborhood and could walk to class. I also want to add one more thing. Suzanne mentioned the animal life. In the wooded area, you saw that big patch of wooded area, we have had over 1200 snowy egrets and blue heron nests in that area. There has been a family of foxes; there has been wild turkey. This is one of these magical neighborhoods that make Wichita so wonderful. Here we are, only 3 blocks from WSU in the middle of the city and here is this little spot where there is wildlife. And I just am disappointed that that hasn't been mentioned what affect this tower would have on this. I know that some of these towers have a terrible humming noise. I don't know whether that is going to be there or not. Thank you very much."

CARRAHER "Are there any questions of the speaker? Thank you, Ms. Criss. Is there anyone else in the gallery who wishes to speak in opposition to the item. Seeing none, Mr. Ferris, you have two minutes for rebuttal, if you so choose."

FERRIS "Thank you, Mr. Chair. I am not going to be lengthy at all. I do want to address a couple of things. I won't get into the aesthetics. Aesthetics are really individual, and I am not going to argue whether they think it is aesthetically pleasing or not. They certainly have that right and I don't want to get into that kind of debate.

I will get into a debate; however, with electro-magnetic fields and RF engineering and radio frequency analysis and technology. I take extreme exception to Mr. Williams for a couple of reasons. No. 1, you don't have the right to discuss it here. The federal government has said that local jurisdictions have no jurisdiction whatsoever when it comes to radio frequency. However, let's discuss it a little bit anyway. What his study is referring to are major power plants that are in areas--you all know them, you drive by them--they are near neighborhoods, they are large, they put off enormous magnetic fields and they may, and he concludes that they may or may not, I would say that they probably do have some health issues related to those. However, cell towers put out radio frequency that is less than AM frequencies. It is less than electro-frequencies that will come through your microwave. This is a technology that is governed so severely by the government that they have to put out report after report after report on what they do.

The average cellular tower will put out less than 10%, and this technology that Cricket uses will put off less than 10% than is allowed by the Federal Government. So safety in that regard is not an issue. We don't need to talk about how the tower is anchored; we've done that many times. Their light poles will blow over on their house before this does. The tower issue they are referring to that make noise are guy towers. This is not a guy tower. I certainly do understand their issues and would be glad to answer any questions. I won't take up any more of your time."

CARRAHER "Are there any questions for the applicant?"

BARFIELD "Mr. Ferris, I think at the last City Council meeting, the Mayor referred to the city possibly building some towers or leasing land. There is some city-owned land, I believe, just to the west of this proposed site on Hillside that is undeveloped. Have you explored the possibility of leasing space from the city in that area?"

FERRIS "I am not aware of where the city property is. We looked at many sites in this area trying to find someone who was willing to allow us to use it, No. 1. That is the first requirement. Second, one who would not duplicate service. So I am not familiar with the city property you are talking about. If it is on the other side of Hillside, it probably is close to half a mile. That is a little bit further and a little bit closer to some of the other towers than we like to get. No, we haven't done that."

BARFIELD "The property in question is, of course, between I-135 and Hillside. It kind of borders on Hillside."

FERRIS "Is that the park you are talking about, over there near the Grove Park area?"

BARFIELD "There is some property to the east. I think the property to the west is a park area, but this is to the east."

FERRIS "It is important to remember that the applicant here is not Cricket Communication; Horizon only, but also Mr. Crigler, who is the property owner. He is the applicant of record who signs the application on this. His rights are also important as we discuss this case."

CARRAHER "Are there any further questions of the speaker. As we move it back to the Commission, are there any further questions or commentary on the item at hand? What is the pleasure of the Commission?"

MCKAY "I would like to ask the lady from the audience who wanted to make a comment to come to the podium and make her comment."

SUZANNE GROSS REED "I live across the street from the proposed tower. My question is simply this, and it is an innocent question due to my ignorance of the procedure of this body. Why is it that the applicant is allowed to address you twice and the neighbors are not?"

CARRAHER "I believe I can answer that question. I will invite my colleagues to step in if, and when necessary. The first time was for the applicant to state their case and what they were wanting to have happen and to bring supporting points and evidence to that. The second time is rebuttal time. Time for them to rebut against any opposition, whether it is the neighbors or what have you. Like if a neighbor or somebody who is in opposition states something that the applicant may disagree with or may need to clarify, that is an opportunity for them to do such. And that is why. That is why the rebuttal is limited to a short period, in this case two minutes. Hopefully I have answered your question."

REED "You have answered my question."

LADY FROM THE AUDIENCE "I would like to know why we can't rebut the rebuttal."

CARRAHER "I will answer that and then we will move on. It is because if we kept rebutting rebuttals, we would be here until 8:00 in the evening."

LADY FROM THE AUDIENCE "Well, there was some false information in the rebuttal."

CARRAHER "Your objection is so noted, but with that in mind, and with all due respect, we are going to move forward with the meeting. With that, I am bringing this back to the Commission."

BARFIELD "I think that probably I am on record as being opposed to establishing these towers right smack dab in the middle of residential areas. So on this one I am going to support staff's recommendation."

MOTION: Having considered the factors as contained in Policy Statement No. 10; taking into consideration the following findings (The zoning, uses and character of the neighborhood: The character of the surrounding area is a single-family neighborhood with complementary land uses such as churches and schools. All of the properties surrounding the site are zoned "SF-6" Single-Family Residential, and they are primarily developed with a single-family residences. A tower in the middle of this residential neighborhood would discourage residential infill in a neighborhood identified by the Comprehensive Plan as a "Conservation" neighborhood that needs to be protected from future market value decline. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "SF-6" Single Family Residential, which accommodates moderate-density, single-family residential development and complementary land uses. The site has been platted as a residential lot and is served by utilities and a paved street. The site is suitable for development with a single-family residence and there is even sufficient vacant land around the site to develop the site with a complementary land use. Wireless communication facilities in excess of 65 feet in height in the "SF-6" Single-Family Residential zoning district may be permitted as a Conditional Use, but typically should conform to the guidelines of the Wireless Communication Master Plan. The proposed wireless community facility does not conform to the guidelines of the Wireless Communication Master Plan. Extent to which removal of the restrictions will detrimentally affect nearby property: The proposed wireless communication facility would be located in the middle of a residential neighborhood with single-family residences and complementary land uses completing surrounding the site. The visual impact on the surrounding neighborhood would have significant detrimental impacts on the nearby properties. No residential neighborhood in the community has a commercial tower located in the middle of the neighborhood due to the detrimental affects of the visual impact of towers. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The proposed wireless communication facility does not conform to the guidelines of the Wireless Communication Master Plan. First, the proposed facility does not utilize existing towers or other tall structures in the area. No radio frequency analyses or other documentation have been provided to substantiate that co-location on existing towers or other tall structures is not feasible. Approving a new tower to be constructed at the proposed location would lead to an unnecessary proliferation of towers in the area. Second, the proposed facility does not preserve the pre-existing character of the area. Planning staff reviewed the locations of existing towers in the community and could not locate a commercial tower that is located in the middle of a residential neighborhood. Other commercial towers in the community are located completely outside residential neighborhoods or on the edge of residential neighborhoods where the border commercial/industrial or undeveloped property. Approving a new tower to be constructed at the proposed location would detrimentally affect the surrounding residential neighborhood and discourage residential infill in a neighborhood identified by the Comprehensive Plan as a "Conservation" neighborhood that needs to be protected from future market value decline. Third, the proposed facility does not minimize the height, mass, or proportion of the facility. The Wireless Communication Master Plan indicates that in some cases

one taller support structure may present a greater visual impact than several shorter support structures. Locating the proposed 125-foot high tower in the middle of a residential neighborhood will have a significant visual impact on the neighborhood that could be avoided by reducing the height, mass, and proportion of the proposed facility by using it in combination with co-location on existing towers or other tall structures in the area. Finally, the proposed 125-foot high facility does not conform to the compatibility height standard since it is proposed to be setback only 40 feet from property zoned "SF-6" located east of the site and only 110 feet from property zoned "SF-6" located west of the site. The application states that the tower could have been placed on the property in compliance with the compatibility height standard but that the proposed site was chosen to take advantage of a heavy buffering of trees along the east property line. In reviewing the site plan, planning staff cannot find a location on the subject property where a 125-foot tower could be located to comply with the compatibility height standard. While planning staff agrees that if a tower is to be approved for the site the proposed location of the tower is better than locating the tower in the middle of the property, the inability of the site to meet the compatibility height standard is a strong indication that the subject property is inappropriate for a tower at the height requested. Impact of the proposed development on community facilities: Access to the site is proposed to be from 24th Street North, an unpaved local street, which would lead to an increase in commercial traffic on a residential street) I move that we recommend to the governing body that the application be denied.

BARFIELD moved, **GAROFALO** seconded the motion.

CARRAHER "Are there any questions or commentary to the motion on the floor?"

HENTZEN "I didn't find a recommendation by the DAB board. Was this submitted to the DAB?"

KNEBEL "There was some conflicts with the holiday scheduling. We were given the opportunity to delay this case before the Planning Commission to allow the DAB board. They chose not to exercise that option."

CARRAHER "So you are saying that the DAB in this case, I believe it is DAB No. 1, had the opportunity to choose whether or not they would discuss or deal with this issue and they chose not to. Is that correct?"

KNEBEL "That is accurate."

WARNER "I took the time to go through this neighborhood and look at this location. I agree with the neighbors. I think the location is inappropriate. I will vote to support the motion."

CARRAHER "Are there any further questions or commentary? Seeing none, we will move into a voice vote."

VOTE ON THE MOTION: The motion carried with 10 votes in favor.
Carragher opposed. Platt abstained.

KROUT "Just for the information of the neighbors who were here. The Planning Commission's decision is final unless the applicant decides to file an appeal of the Planning Commission's decision in the next 14 days. If they do, then it will be scheduled for the City Council. You won't have an opportunity to have a public hearing at the City Council, but the Council will take the record of the Planning Commission. You also have the right, if you are within 200 feet of this property to file written protests. If there are a sufficient number of protests, it would require a 3/4 vote of the City Council to override those protests. If you have any other questions, you can contact Scott or me after the meeting. I will meet you outside if you have any questions."

CARRAHER "I want to add something, and that is if you haven't signed on the sign-up sheet and wish to be informed of the progress on this case, by all means, please sign up on the sheet on the table nearest to the audience. That way you are fully informed of the progress of the case."

KROUT "I do want to say, for the record and to clarify, that what Mr. Ferris said about the fact that the Planning Commission and the governing body cannot consider the impact of potential electro-magnetic waves as a part of their decision in this case, I think is accurate. If they were to have made their decision based on that, it is very likely because in other courts in cases like that with a decision based on that concern have been reversed by the courts. I do believe that there is more than sufficient evidence of facts in the staff findings to support a denial without that issue."

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8. **CUP2000-00059 (DP-195 Amendment #8)** - SonLeo LLC c/o Leonard Ropfogel (Owner/Applicant); Austin Miller PA c/o Kim Edgington (Agent) request an amendment to permit outdoor vehicle and equipment sales on Parcel 11, located north of K-96 and west of Rock Road, described as:

Part of Lot 1, Block 1, Comotara Power Center 2nd Addition to the City of Wichita, Sedgwick County, Kansas, described as follows:

Beginning at the Southwest corner of Lot 1, thence North 01 degrees 04'59" West on the West line of said Lot 1, for a distance of 117.63 feet; thence North 88 degrees 54'55" East for a distance of 507.08 feet; thence South 01 degrees 04'59" East parallel to the West line of said Lot 1 for a distance of 168.70 feet to the South line of said Lot 1; thence North 85 degrees 57'48" West on the South line of said Lot 1 for a distance of 455.64 feet; thence North 80 degrees 02'21" West on the South line of Lot 1 for a distance of 54.26 feet to the point of beginning.

SCOTT KNEBEL, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

BACKGROUND: The applicant is requesting an amendment to the Comotara Power Center CUP (DP-195) to permit outdoor vehicle and equipment sales on Parcel 11. The zoning of Parcel 11 is "LC" Limited Commercial. Outdoor vehicle and equipment sales may be permitted with a Conditional Use in the "LC" Limited Commercial district. When a property is located in a CUP, a Conditional Use request is processed as a CUP amendment.

The applicant submitted a site plan (attached) that shows a 1.7 acre vehicle sales lot between Sam's Club and the K-96 freeway. The site plan shows that the vehicle sales lot would hold 165 vehicles, excluding customer parking. A 5,000 square foot sales building is shown, with customer parking located south of the building and employee parking located west of the building. Light standards matching the design of the shopping center parking lot are shown. One sign and 3,900 square feet of landscape area are shown. The CUP also requires a landscape buffer planting of evergreens and shrubs at 1.5 times the requirements of the landscape ordinance along the K-96 on-ramp for Parcel 11. The applicant has indicated that some minor modifications to the site plan may be requested once a final lease agreement is reached.

The character of the surrounding area is predominately commercial along Rock with multi-family uses to the south and vacant property to the west zoned for multi-family use. The properties north and east of the site are zoned "LC" Limited Commercial and "GC" General Commercial and are developed with various commercial uses that are primarily retail. The property south of the site across K-96 is zoned "MF-18" Multi-Family Residential and is developed with apartments. The property west of the site is zoned "MF-29" Multi-Family Residential and is undeveloped.

CASE HISTORY: The subject property is platted as part of Lot 1, Block 1 Comotara Power Center 2nd Addition, which was recorded August 9, 1995. The subject property is located within the Comotara Power Center CUP, which was originally approved February 27, 1990 and has been amended numerous times since that date.

ADJACENT ZONING AND LAND USE:

NORTH:	"LC"	Various commercial uses, primarily retail
SOUTH:	"MF-18"	Apartments
EAST:	"LC"	Various commercial uses, primarily retail
WEST:	"MF-29"	Undeveloped

PUBLIC SERVICES: This site has access to Rock, a five-lane arterial street. Traffic volumes on Rock are approximately 14,200 vehicles per day. The 2030 Transportation Plan estimates that traffic volumes on Rock will increase to approximately 25,500 vehicles per day. Development of the site with a vehicle sales lot would generate significantly less traffic than other permitted uses such as restaurants or service stations. Municipal water and sewer services are available or can be extended to serve this site.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the Comprehensive Plan identifies the general location as appropriate for "Commercial" development. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The Commercial Locational Guidelines also recommend that auto-related uses should be guided to areas such as the central business district fringe, Kellogg, and areas where the uses are established and can be supported by traffic patterns, surrounding land uses, and utilities.

RECOMMENDATION: Based upon information available prior to the public hearing, planning staff recommends that the request be APPROVED, subject to the following conditions:

1. The permitted uses for Parcel 11 shall be modified to add outdoor vehicle and equipment sales.
2. Outdoor vehicle and equipment sales shall be developed in accordance with a site plan approved by the Planning Director prior to the issuance of a building permit. The site plan shall show landscaping plantings, paved areas, and the location for all spaces that will be used for customer and employee parking and for the storage or display of vehicles. The required customer and employee parking shall be marked and shall not be used for the display of vehicles.
3. Outdoor vehicle and equipment sales shall not be conducted in conjunction with any use not directly related to such a business. Any automotive service or repair work conducted on the site shall be entirely within a building.

No body or fender work shall be permitted.

4. All parking, storage and display areas shall be paved with concrete, asphalt or asphaltic concrete. Parking barriers shall be installed along all perimeter boundaries abutting streets, except at driveway entrances or where fences are erected, to ensure that parked vehicles do not encroach onto public right-of-way.
5. No temporary display signs are permitted. No commercial flags, banners, pennants, streamers, pinwheels, bunting and similar devices shall be permitted.
6. There shall be no use of elevated platforms for the display of vehicles.
7. No outdoor speakers or sound amplification systems shall be permitted.
8. No outside storage of salvaged vehicles or parts shall be permitted in association with this use.
9. The lighting standards of Section IV-B.4 of the Unified Zoning Code shall be complied with. No string-type or search lighting shall be permitted.
10. The development of this property shall proceed in accordance with the development plan as recommended for approval by the Planning Commission and approved by the Governing Body, and any substantial deviation of the plan, as determined by the Zoning Administrator and the Director of Planning, shall constitute a violation of the building permit authorizing construction of the proposed development.
11. Any major changes in this development plan shall be submitted to the Planning Commission and to the Governing Body for their consideration.
12. The applicant shall submit 4 revised copies of the C.U.P. to the Metropolitan Area Planning Department within 60 days after approval of this amendment by the Planning Commission or Governing Body, as applicable, or the request shall be considered denied and closed.

The staff's recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The character of the surrounding area is predominately commercial along Rock with multi-family uses to the south and vacant property to the west zoned for multi-family use. The properties north and east of the site are zoned "LC" Limited Commercial and "GC" General Commercial and are developed with various commercial uses that are primarily retail. The property south of the site across K-96 is zoned "MF-18" Multi-Family Residential and is developed with apartments. The property west of the site is zoned "MF-29" Multi-Family Residential and is undeveloped.
2. The suitability of the subject property for the uses to which it has been restricted: The property is zoned "LC" Limited Commercial and could be developed with commercial uses permitted by the Comotara Power Center CUP.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Any detrimental affects on properties from lighting, noise, and other factors should be mitigated by the requirements of the Unified Zoning Code, the Landscape Ordinance, and the screening and buffering requirements of the CUP.
4. Conformance of the requested change to adopted or recognized Plans/Policies: The Land Use Guide of the Comprehensive Plan identifies the general location as appropriate for "Commercial" development. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The Commercial Locational Guidelines also recommend that auto-related uses should be guided to areas such as the central business district fringe, Kellogg, and areas where the uses are established. While there are no established vehicle sales uses at this location, freeway interchanges like this seem to be increasingly favored for new locations, such as on Webb near K-96 and at Kellogg and Greenwich. As proposed, the request conforms to the locational guidelines through the screening and buffering requirements of the CUP and its location along a freeway.
5. Impact of the proposed development on community facilities: The use of this property should have limited impact on community facilities.

KNEBEL "This is a request to amend the Comatara Power Center Community Unit Plan to permit an outdoor vehicle and equipment sales on Parcel 11, which is highlighted on the slide before you. As you can see, the zoning on that parcel was Limited Commercial. Car sales are permitted with a Conditional Use in the LC district. When a property is located within a CUP, Conditional Uses are handled as an amendment to that CUP.

You can see this application is between the Sam's and the highway adjacent to the on-ramp. The applicant has submitted the site plan that is located on the screen, showing a vehicle sales lot of approximately 165 vehicles. The applicant has

indicated that they may desire to make some minor modifications to this site plan based on a final lease agreement with an actual tenant on the site.

The character of the surrounding area is primarily commercial. There are some vacant multi-family residences and some existing multi-family residences across the highway and some vacant land to the west on the other side of that wall. To the east is some commercial development along Rock Road, and to the north, again, commercial development along Rock Road. The Land Use Guide identifies this property as appropriate for commercial development. The applicant is for commercial use. The Planning staff is recommending that the application be approved, subject to a number of conditions. I will go through those briefly.

The first one is that a site plan be approved by the Planning Director based on final conditions that the applicant wishes to have the site developed; that any automotive repair be conducted within a building; that all display areas and parking areas be paved; restrictions on temporary signs; the use of elevated platforms and the use of outdoor speakers, as well as restrictions on the outdoor storage of salvage vehicles and the use of string or search lights.

The District Advisory Board heard this case at their hearing Monday night. They recommended approval, subject to staff comments and added additional recommendations for conditions of approval that are listed on a memo that you should have before you. The three recommendations they have are that the landscaping be professionally maintained and irrigated on the site and that the dead plant material be replaced. I failed to mention that these recommendations I am going through are based on another case in the same City Council district that was approved recently at the location of Harry Street and Rock Road.

The second condition is that the automobiles displayed for sale shall be of a standard quality such that they can be covered by a warranty. That was not the specific wording of the DAB board. They had directed me to utilize the case at Harry and Rock. That case said that the quality should be the same as a new car dealership in Winfield, Kansas. I didn't feel that it was reasonable to hold this particular site to that, so I kind of modified their recommendation. They did mention that in the Harry and Rock case that any cars that were traded in that could not be sold subject to a warranty should not be sold at that site. That is how I came up with that recommendation. I discussed that with the legal counsel for the city and he indicated that the Planning Commission would have the final determination whether that is a reasonable condition or not. That is a recommendation of the DAB board. Staff feels that it would be pretty difficult to enforce.

The third recommendation is that the vehicles be sold only and not rented and that equipment and trailers not be sold or rented at the site. These recommendations are based on the findings in the staff report, and I will stand for questions."

CARRAHER "Are there any questions of staff in regards to this item?"

WARREN "I guess I am having a lot of trouble trying to define what a high-quality used car is. I don't think that is a practical thing and I wouldn't support that."

CARRAHER "Would anybody like to clarify that? It does sound rather vague. We will now hear from the applicant."

EDGINGTON "I am with Austin-Miller, representing the applicant. I will try to be brief this afternoon. In general, we are in agreement with staff comments and this is a surprise, not only to you, but to me. One clarification I would like to add. This has been similarly worded in other cases that I have worked on that I am familiar with regarding display signs; however, in the past, we have allowed that banners affixed to light poles not exceeding 50 square feet of material per light pole are permitted. And that in addition to the limitations that staff has listed that the affixed banners and special promotion items be limited to 12 events per year, not to exceed 90 days per year for all events. This has been a fairly standard requirement that I know I have been pretty familiar with.

In keeping this particular car lot on the level with most of the other car lots that have been coming before you here in the recent past, we would ask that that be included. Again, I think the question has come up about what is a quality used car. As far as the recommendation that staff just stated about the warranty, I apologize but I was not given that information so I don't have that in front of me to look at what that wording is. We did agree to the additional landscaping requirements that were discussed by the DAB and also the restriction on the rental of cars and equipment and sale trailers. However, we would ask that this particular recommendation about warranted vehicles not be included as part of this amendment to the Community Plan due to its somewhat ambiguous nature. I would be happy to answer any questions."

CARRAHER "Are there any questions of the applicant?"

KROUT "Could you read the second part of what you were referring to on the signage and on the posts? Where you wanted to be able to do 50 square foot banners and...?"

EDGINGTON "Affixed to the light poles. And in addition to the other restrictions that staff has placed on signage including commercial flags and banners, that the affixed banners and special promotional items are limited to 12 events per year not to exceed 90 days per year for all events. That is wording that is taken out of several other Conditional Use cases for vehicle sales."

WARREN "Does that suggest, then that pennant streamers and pinwheels would be used during those special promotions? What are you asking for on that special promotional area?"

EDGINGTON "What we are asking for is to allow the affixed banners to light poles."

WARREN "So you don't want those as a permanent thing, you want those only in special promotions?"

EDGINGTON "Right."

WARREN "So you are not asking for a waiver on anything else?"

EDGINGTON "No."

CARRAHER "Is there anyone in the gallery who wishes to speak in favor of this item? Is there anyone in the gallery who wishes to speak in opposition to this item? We will move back to the Commission."

KROUT "Could you come back to the podium, Kim? I have a couple of questions."

EDGINGTON "Yes."

KROUT "No. 1, did you provide the question about banners and promotional events to the DAB, and did they respond. No. 2, did you indicate that you had a problem with their recommendation about the quality of cars at their meeting?"

EDGINGTON "We don't have a problem maintaining quality cars on the used lot; however, I don't know that right now there is a good process in place to achieve that goal."

KROUT "Did you tell them that at the DAB meeting?"

EDGINGTON "No. We said we would look at what was in the wording of Harry and Rock Road's Conditional Use and Scott said that we changed that somewhat but that we had tried to keep the spirit of it and now that the Law Department has said that it is probably not enforceable. I don't know that we have a good mechanism to make that happen. I do know that the clients that we are working with right now are the possible tenants and are not Low-Pay Motors on South Broadway, no offense to anyone.

However, they are fairly reputable dealers that don't have an intent to put a 40-year-old heap of steel on this car lot. We have agreed to some other landscaping issues and we have already written into the site plan additional landscaping beyond what is required. In doing those things, we are not going to, then, cut off our nose to spite our face by putting a bunch of heap vehicles on that lot. As far as the banner issue, we did bring that up at the DAB but they did not address that in their comments. It was not included as any part of their motion."

BARFIELD "Maybe I was asleep, but on No. 5, which deals with banners and whatever else. Do you have any opposition to that?"

EDGINGTON "No."

BARFIELD "Or did you say No. 2? You said No. 2."

EDGINGTON "We are talking about No. 5. The No. 2 I was referring to were the additional DAB recommendations that are on a memo that you received. I don't have it in front of me so I can't refer to it, I'm sorry."

WARREN "It wasn't very long ago that it was the flavor of this Commission that we wanted to restrict, regulate and control automobile sales on vehicle car lots except that we don't want to take away the image that they are, in fact, of automobile vehicle sales lots. In that, we granted the right for these banners to be placed on a pole, thinking that at least that would give them the identity of the business they are in.

MOTION: Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: The character of the surrounding area is predominately commercial along Rock with multi-family uses to the south and vacant property to the west zoned for multi-family use. The properties north and east of the site are zoned "LC" Limited Commercial and "GC" General Commercial and are developed with various commercial uses that are primarily retail. The property south of the site across K-96 is zoned "MF-18" Multi-Family Residential and is developed with apartments. The property west of the site is zoned "MF-29" Multi-Family Residential and is undeveloped. The suitability of the subject property for the uses to which it has been restricted: The property is zoned "LC" Limited Commercial and could be developed with commercial uses permitted by the Comotara Power Center CUP. Extent to which removal of the restrictions will detrimentally affect nearby property: Any detrimental affects on properties from lighting, noise, and other factors should be mitigated by the requirements of the Unified Zoning Code, the Landscape Ordinance, and the screening and buffering requirements of the CUP. Conformance of the

requested change to adopted or recognized Plans/Policies: The Land Use Guide of the Comprehensive Plan identifies the general location as appropriate for "Commercial" development. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The Commercial Locational Guidelines also recommend that auto-related uses should be guided to areas such as the central business district fringe, Kellogg, and areas where the uses are established. While there are no established vehicle sales uses at this location, freeway interchanges like this seem to be increasingly favored for new locations, such as on Webb near K-96 and at Kellogg and Greenwich. As proposed, the request conforms to the locational guidelines through the screening and buffering requirements of the CUP and its location along a freeway. Impact of the proposed development on community facilities: The use of this property should have limited impact on community facilities.) I move that we recommend to the governing body that the request be approved, subject to the following:

1. The permitted uses for Parcel 11 shall be modified to add outdoor vehicle and equipment sales.
2. Outdoor vehicle and equipment sales shall be developed in accordance with a site plan approved by the Planning Director prior to the issuance of a building permit. The site plan shall show landscaping plantings, paved areas, and the location for all spaces that will be used for customer and employee parking and for the storage or display of vehicles. The required customer and employee parking shall be marked and shall not be used for the display of vehicles.
3. Outdoor vehicle and equipment sales shall not be conducted in conjunction with any use not directly related to such a business. Any automotive service or repair work conducted on the site shall be entirely within a building. No body or fender work shall be permitted.
4. All parking, storage and display areas shall be paved with concrete, asphalt or asphaltic concrete. Parking barriers shall be installed along all perimeter boundaries abutting streets, except at driveway entrances or where fences are erected, to ensure that parked vehicles do not encroach onto public right-of-way.
5. No temporary display signs are permitted. No commercial flags, banners, pennants, streamers, pinwheels, bunting and similar devices shall be permitted, except that fixed banners, affixed to light poles and not exceeding 50 square feet of material per light pole, will be permitted.
6. There shall be no use of elevated platforms for the display of vehicles.
7. No outdoor speakers or sound amplification systems shall be permitted.
8. No outside storage of salvaged vehicles or parts shall be permitted in association with this use.
9. The lighting standards of Section IV-B.4 of the Unified Zoning Code shall be complied with. No string-type or search lighting shall be permitted.
10. The development of this property shall proceed in accordance with the development plan as recommended for approval by the Planning Commission and approved by the Governing Body, and any substantial deviation of the plan, as determined by the Zoning Administrator and the Director of Planning, shall constitute a violation of the building permit authorizing construction of the proposed development.
11. Any major changes in this development plan shall be submitted to the Planning Commission and to the Governing Body for their consideration.
12. The applicant shall submit 4 revised copies of the C.U.P. to the Metropolitan Area Planning Department within 60 days after approval of this amendment by the Planning Commission or Governing Body, as applicable, or the request shall be considered denied and closed.

WARREN moved, **MICHAELIS** seconded the motion.

CARRAHER "Are there any questions or comments regarding the motion on the floor."

BARFIELD "I have a questions for the motion maker. Does your motion entail permanent banner attachments to light poles, or are we talking about special interests?"

WARREN "I am saying permanent because it is not unsightly. These banners show that this is an automobile sales lot. They are a part of that business. We have denied them of so many things that they have had in the past, you know, the banners, the pinwheels, the pennants and streamers. I am saying that we are leaving one thing and that is those banners

that do on those light poles as being acceptable for this kind of a business. Just like that big sign on Sam's is huge, but it is acceptable where it is. Sam's is right to the north of this."

BARFIELD "But wouldn't a stationary sign serve to note that it was an automobile sales lot?"

WARREN "Well, you know, automobile dealers...go out there to west Kellogg to the brand-new one. You are going to see flags on those light poles."

MICHAELIS "The only comment I would like to make is that most of you have probably driven by here, and if there is such a thing as a good place for a used car lot, or a car lot in general, this is probably it. It is completely bounded by Sam's on the north and other commercial on the east and the by-pass on the south, so the only place that you can really see this from is a little bit from the west and as you are driving down the by-pass. The reason I supported the motion as it was made is because even if the applicant is offering to put up signage only a certain amount or number of times during the year. That is something that is absolutely impossible to monitor. I don't know who would want to go out and count the days they have pennants up. And like I said, because of the location, I don't see that as a problem here."

GAROFALO "The only thing I really want to say is that I have been kind of struggling with this one simply because this thing will be right along the highway. I realize that there is other commercial in the area, but what bugs me most about driving along highways and seeing salvage yards, and I know that this isn't a salvage yard, but seeing salvage yards and all of that kind of trashy looking stuff along the highway, I think it is detrimental to the highways, the byways, etc. I really struggled with whether or not this is a good location. I take exception to Mr. Michaelis' statement that it is. I question whether this is a good location for something like that. But just driving along there and seeing all of those cars sitting down there, but I guess it may be no worse than looking out onto the parking lot to the north and seeing a bunch of cars sitting there from the shoppers. I do have some concerns about it, but I probably will go along with it because I can appreciate the comments of staff and the fact that the DAB board went along with it also. I do have concerns about the flags flying on the tops of poles and all of that jazz."

PLATT "I just wanted to say that I usually vote against used car lots, so I want to go on record to say that I am going to support this one. I think this is indeed a proper place for a used car lot. I think Mr. Garofalo probably hit the right note when he said that to the north of it was this huge parking lot, so what difference does it make whether they are for sale or they are not. This is where they belong. It is too bad that strangers, visitors to town have to drive by there, but this is the least of all evils, I think, for it. So I would support pinwheels and skyrockets and everything you want to put up on it and say this is a car lot."

MARNELL "My question has to do with the motion, as to whether or not it included the Item No. 2 from the DAB report."

WARREN "To clarify my motion--no, it didn't take that into consideration. It was for the staff comments as they were presented to us. That only, and subject to that change in the banner on Item No. 5."

MICHAELIS "I would concur with that."

HENTZEN "I wanted to tell Frank that there is a song I want to recommend to you, and it goes 'don't look, Ethel'."

KNEBEL "Just a clarification on the motion. That excludes any of the recommendations of the DAB?"

WARREN "Well the landscaping, and we could handle that under city Code. We require landscaping and we require these applicants to go further than you may think. On No. 2, we will disregard that."

KNEBEL "So just No. 2 is eliminated? I am just asking. You said it was staff comments and staff comments only, and I was inquiring as to whether that meant that you intended to exclude the DAB comments."

WARREN "My motion disregards those two DAB comments. Nos. 1 and 2. The last sentence was concerns No. 1 and concerns No. 2. Those are what I disregarded."

KROUT "Okay. Well, if you look at Scott's recommendations and try to interpret them."

KNEBEL "Okay, then disregarding Scott's recommendations and going back to....well, I said we were going to go by this first analysis and recommendations and disregarding the recommendations of the DAB. Is that clear enough?"

KROUT "Scott's third recommendation says that vehicles shall not be offered for rental equipment and trailers shall not be offered for rental or sale'. Are you in agreement with that?"

WARREN "Well, we've never made that requirement."

KROUT "Yes, we certainly have. And, we also have, in some cases, said that banners won't be allowed. So we have treated these different, depending on the different circumstances. I am not saying you should or shouldn't, but we certainly have made differences in them."

WARREN "My motion was not taking those recommendations into consideration."

MICHAELIS "The second does concur with that."

CARRAHER "Are there any further questions or commentary with regards to the motion? Mr. Krout, did you still want to make the point that you mentioned earlier?"

KROUT "I just think that probably, at the very least, the City Council will end up sending this back to the DAB because of the differences in your recommendations."

MICHAELIS "I guess I would like to address that. I am a little confused now and maybe I am not totally aware of the policy and how we are supposed to be treating DAB reports, but I was under the impression that it was a report with suggestions and not necessarily conditions of approval. Am I right there?"

WARREN "That's right."

KNEBEL "Those are the recommended conditions of approval from the DAB board."

MICHAELIS "Is it recommended conditions of approval or is it suggestions? There is a huge difference."

KNEBEL "They are recommended conditions of approval."

MICHAELIS "All right. Do they take formal minutes and they have a formal session like this?"

KNEBEL "Yes. You should have their minutes attached. They are less than verbatim."

MICHAELIS "I don't have any."

CARRAHER "We don't receive the minutes attached."

KNEBEL "The one page statement from the DAB board is their minutes."

MICHAELIS "So we are being instructed that from now on and in the future that the DAB report is equivalent to our same recommendations and procedures?"

KNEBEL "I don't know whether it is equivalent or not equivalent. It is a note of recommendation."

MICHAELIS "The reason I am saying that is that I think we need to stick with staff comments. If the DAB report wants to go along with it, that is fine, but I think our motions need to be based on what we are dealing with here and this as a reference material."

KROUT "Well, if you want to go with the staff comments, we have recommended three additional conditions of approval that are on Scott's memo that he handed out."

WARREN "But that predicated on the DAB recommendations, and he is trying to highlight what he thinks they wanted. Isn't that right?"

KROUT "It says the Planning staff has reviewed the Conditions of approval for that case, and recommends the following additional conditions of approval."

WARREN "But that was subject to the DAB's meeting, and then he made those recommendations. But what I am understanding the DAB said was that they would like to have landscaping and high quality used cars. And then Scott has tried to interpret that."

KROUT "Yes, he tried to interpret it."

WARREN "Well, I disagree with that."

KROUT "Well, that is fine."

MARNELL "I think this says that they approve the recommendations with the following concerns. That is all it says is concerns. Everybody can look where that Sam's parking lot is and you aren't going to be able to regulate what kind of vehicles are there. I think some of this goes to a level of silliness and that we ought to move on."

WARNER "I have a question. You mentioned that the City Council will probably send it back to the DAB in your opinion."

KROUT "I think that they may. I think that because they will want to know if the DAB would still recommend approval without their concerns being addressed."

WARNER "Who is supposed to make these decisions? Is it the DAB or is it the Planning Commission?"

KROUT "If there are no protests, then the Planning Commission's decision will be final unless the City Council forwards it."

WARNER "Does staff make protests?"

KROUT "We can. I won't in this case, but I will inform the Councilmember and the District Advisory Board what the Planning Commission has voted on."

JOHNSON "Marvin, whatever we decide here today, and say this decision is made as the motion stands now, does the City Council have any option of changing that any once they got it?"

KROUT "They could if they decide that it is an important enough issue to bring in front of them, which they may not."

JOHNSON "That is what I have always thought, that they have the final decision."

KROUT "Right. They have the option to take a look at this and either modify it or send it back if they don't like it."

JOHNSON "So in that case, I don't have a problem approving it the way it is because they have the final say."

WARREN "I'm ready to vote."

HENTZEN "I was concerned about what I think Jerry Michaelis was talking about, and that is that we ask for the DABs information, but I don't think that just because we recommend something else that the staff or the City Council either one should send it back to the DAB."

KROUT "They may be perfectly satisfied with it."

HENTZEN "They should just weigh the facts and make a decision. Otherwise, I think you are just going to have more meetings, more trouble and delays. I think you have clarified it--we get the information from the DABs if they want to give it to us, but we don't have to satisfy every thought that they have."

MCKAY "We did away with the CPOs because they were cumbersome and didn't meet on time, and kind of because they would meet and they had their own schedule. We had one just prior to this and the neighborhood didn't have time and they didn't want to mess with it or anything else and they gave it to us. Now we are trying to determine whether or not the City Council is going to turn this down because of them. All we have done is created another monster to balance or counter conflict with what we are trying to do here. In my opinion, the only way that this will ever be brought to the attention of the City Council to be sent back to anybody is if staff would say 'we don't want it done--we want it a different way'."

WARREN "I am just so delighted that I am on the same side of an issue having to do with automobiles with Dr. Platt that I am ready to go."

CARRAHER "Okay, then we will move into a vote."

VOTE ON THE MOTION: The motion carried unanimously with 12 votes in favor.

9. **CUP2000-00058 (DP67 Amendment #4)** - Aldi, Inc. c/o Martin C. Florie (Owner); Roni's LLC c/o Rhonda S. Loehr (Contract Purchaser/Applicant); Bernard Thompkins (Agent) request an amendment to DP67 on property described as:

Parcel A:

That part of Lot 1, Block 1, Sports & Recreation Addition, to Wichita, Sedgwick County, Kansas, described as beginning at the northwest corner of said Lot 1; thence N 90 degrees 00'00"E, along the north line of said Lot 1, 142 feet; thence S 00 degrees 00'00"W, parallel with the west line of said Lot 1, 40 feet; thence N90 degrees 00'00"E, parallel with the north line of said Lot 1, 10 feet; thence S00 degrees 00'00"W, parallel with the west line of said Lot 1, 125 feet; thence S 90 degrees 00'00"W, parallel with the north line of said Lot 1, 152 feet, to a point on the west line of said Lot 1; thence N 00 degrees 00'00"E, along the west line of said Lot 1, 165 feet to the Point of Beginning. 24,680.0 Square Feet, or 0.567 Acres. Generally located on the southeast corner of 21st Street North and Bramblewood.

SCOTT KNEBEL, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

BACKGROUND: The applicant is requesting an amendment to the Northborough CUP (DP-67) to permit a drive-thru restaurant on Parcel 5B. The zoning of Parcel 5B is "LC" Limited Commercial, and Parcel 5B permits restaurants except for drive-thru and drive-in restaurants. A change in approved uses to a use that is more intensive than the approved uses requires an amendment of the CUP.

The applicant submitted a site plan (attached) that shows a 0.57 acre lot located at the southeast corner of 21st Street North and Bramblewood. The site plan shows the drive-thru restaurant (Roni's Diner) located in the southeast corner of the lot, with parking on the north and west sides of the restaurant. The site plan shows the drive-thru menu board located on the west side of the restaurant with the pick-up window located on the south side of the restaurant.

The character of the surrounding area is commercial south of 21st Street North and residential north of 21st Street North. The properties south, east, and west of the site are zoned "LC" Limited Commercial and are developed with retail businesses. The properties north of the site across 21st Street North are zoned "SF-6" Single-Family Residential and are developed with multi-family and single-family residences that are screened from the site by a row of trees and fencing.

CASE HISTORY: The subject property is platted as part of Lot 1, Block 1 Sports & Recreation Addition, which was recorded December 26, 1994. The subject property is located within Northborough CUP, which was originally approved March 11, 1975 and has been amended several times since that date.

ADJACENT ZONING AND LAND USE:

NORTH:	"SF-6"	Multi-family, single-family
SOUTH:	"LC"	Retail
EAST:	"LC"	Retail
WEST:	"LC"	Retail

PUBLIC SERVICES: The site has access to Bramblewood, an extra-wide two-lane local street. Traffic volumes are not available for Bramblewood. The site also has access to 21st Street North, a four-lane arterial street. Traffic volumes on 21st Street North are estimated to be approximately 23,600 vehicles per day. The 2030 Transportation Plan estimates that traffic volumes on 21st Street North will increase to approximately 28,000 vehicles per day. Municipal services are available or can be extended to serve the site.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the Comprehensive Plan identifies the general location as appropriate for "Commercial" development. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The proposed use of the subject property conforms to these locational guidelines.

RECOMMENDATION: Based upon information available prior to the public hearing, planning staff recommends that the request be APPROVED.

The staff's recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The character of the surrounding area is commercial south of 21st Street North and residential north of 21st Street North. The properties south, east, and west of the site are zoned "LC" Limited Commercial and are developed with retail businesses. The properties north of the site across 21st Street North are zoned "SF-6" Single-Family Residential and are developed with multi-family and single-family residences that are screened from the site by a row of trees and fencing.
2. The suitability of the subject property for the uses to which it has been restricted: The property is zoned "LC" Limited Commercial and could be developed with commercial uses permitted by the Northborough CUP.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Any detrimental affects on properties from lighting, noise, and other factors should be mitigated by the requirements of the Unified Zoning Code and the Landscape Ordinance and the existing screening on the north side of 21st Street North.
4. Conformance of the requested change to adopted or recognized Plans/Policies: The Land Use Guide of the Comprehensive Plan identifies the general location as appropriate for "Commercial" development. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The proposed use of the subject property conforms to these locational guidelines.
5. Impact of the proposed development on community facilities: The use of this property should have limited impact on community facilities.

KNEBEL "The applicant is requesting to amend the permitted uses on Parcel 5b, which is highlighted here (indicating). It is zoned Limited Commercial. The applicant desires to construct a drive-thru restaurant. The permitted uses of that parcel specifically exclude drive-thru restaurants as a permitted use. The applicant submitted the site plan that is attached. It shows the drive-thru restaurant in its orientation, facing 21st Street. There is an Aldi's and some offices located to the south. The Brittany Center is located to the southwest and west; there is residential to the north, and commercial to the east.

The Land Use guide recommends that the site be approved for commercial uses. Staff also recommends that the request be approved, based on the findings in the staff report:

CARRAHER "Are there any questions of staff regarding this item? Seeing none, thank you, Mr. Knebel. Now we will hear from the applicant."

BEN LOEHR "I am the agent for the owner of this project. I am basically here to answer any questions or concerns of the public. That is all I have to say."

CARRAHER "Are there any questions of the applicant?"

MCKAY "Do you agree with the staff comments?"

KNEBEL "There aren't any staff comments."

LOEHR "Okay, I agree."

CARRAHER "Are there any further questions of the applicant? Thank you, sir. Is there anyone in the gallery who wishes either to speak in favor or in opposition to the item? Seeing none, we will bring it back to the Commission."

MOTION: Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: The character of the surrounding area is commercial south of 21st Street North and residential north of 21st Street North. The properties south, east, and west of the site are zoned "LC" Limited Commercial and are developed with retail businesses. The properties north of the site across 21st Street North are zoned "SF-6" Single-Family Residential and are developed with multi-family and single-family residences that are screened from the site by a row of trees and fencing. The suitability of the subject property for the uses to which it has been restricted: The property is zoned "LC" Limited Commercial and could be developed with commercial uses permitted by the Northborough CUP. Extent to which removal of the restrictions will detrimentally affect nearby property: Any detrimental affects on properties from lighting, noise, and other factors should be mitigated by the requirements of the Unified Zoning Code and the Landscape Ordinance and the existing screening on the north side of 21st Street North. Conformance of the requested change to adopted or recognized Plans/Policies: The Land Use Guide of the Comprehensive Plan identifies the general location as appropriate for "Commercial" development. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The proposed use of the subject property conforms to these locational guidelines. Impact of the proposed development on community facilities: The use of this property should have limited impact on community facilities.) I move that we recommend to the governing body that the request be approved, subject to staff comments.

MCKAY moved, **LOPEZ** seconded the motion, and it carried unanimously (12-0).

10. **CON2000-00058** - Alan S. Girrens (owner); Austin-Miller, P.A. c/o Kim Edgington (agent) request a Conditional Use for a rural home occupation on property described as:

The East 600 feet of: Beginning 1376.85 feet South of the Northeast corner of the Northeast Quarter of Section 1, Township 28, Range 2 West; thence South 702.22 feet; thence West 1241.03 feet; thence North 702.22 feet; thence East 1241.03 feet to the beginning, except the East 40 feet for road. AND

The East 600 feet of:

Beginning 2079.07 feet South of the Northeast corner of the Northeast Quarter of Section 1, Township 28, Range 2 West; thence South to a point 128.77 feet South of the Northeast corner of the Southeast Quarter; thence West 1240.04 feet; thence North 639.68 feet to a point West of the beginning; thence East 1241.03 feet to the beginning, except the East 40 feet for road. Generally located one-fourth mile south of Pawnee on the west side of 119th Street West.

DONNA GOLTRY, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

BACKGROUND: The applicant is requesting a "Conditional Use" for an 18-acre tract located on the west side of 119th Street West approximately one-fourth mile south of Pawnee. The property is zoned for large-lot residential use and has a

residence connected to the north end of the main structure. In addition, the building is being used for the applicant's landscape contractor's business (which comes under the zoning code definition of "construction sales and service").

The application area is located in an agricultural area with "SF-20" Single-Family zoning surrounding it on all sides. The nearest development is Granview Subdivision under development one mile north, and DP-142 Pawnee Mesa Residential C.U.P. (Hunter's Ridge) that is located one-half mile to the northeast. Both of these areas are within the corporate limits for Wichita. The only non-residential use near the property is a site for a church on the northeast corner of 119th and Pawnee, zoned "SF-20." The Calfskin Creek borders the property to the west, but the application area is outside the FEMA 100-year floodplain. The applicant owns additional land to the west that lies within the floodplain.

The proposed Site Plan shows an existing building and a pole barn. Both are metal structures. The location of the residence is not designated on the Site Plan, but it is our understanding that it is located in the northern portion of the main building. The Site Plan also shows a proposed 10,000 square foot building expansion, as well as a significant expansion of the outdoor storage to approximately 80,000 square feet. The proposed screening is a minimal planting of trees on the front of the property along 119th Street West. (See "Recommendations" additional discussion of the ways in which the Site Plan does not comply with guidelines for a rural home occupation.

ADJACENT ZONING AND LAND USE:

NORTH:	"SF-20" Single-Family	Agriculture, farm
EAST:	"SF-20" Single Family	Agriculture
SOUTH:	"SF-20" Single Family;	Agriculture
WEST:	"SF-20" Single Family	Agriculture, Calfskin Creek

CASE HISTORY:

The applicant filed a request for "LI" Limited Industrial zoning (ZON2000-00015) that was ultimately withdrawn on October 19, 2000. Staff had recommended DENIAL of "LI" based on this use being incompatible with the Comprehensive Plan and future development trends of the area. The case was heard and deferred by MAPC previously (May 25, 2000, June 15, 2000, and June 29, 2000). The motion on the June 29th was to defer the case until receiving a County Counselor's opinion on whether the use could be operated as "Conditional Use" for a rural home occupation. This opinion, dated September 29, 2000, confirmed that a rural home occupation may be permitted based on the facts as presented. These facts included our previous memo dated June 25, 2000 that did not show the proposed building expansion and where we had estimated outdoor storage to be in the range of 5,000 square feet.

The previous case (ZON2000-00015) received a 40 percent protest against the proposed "LI" zoning.

PUBLIC SERVICES: Access to the property is via 119th Street West, a two-lane arterial paved to county standard. Traffic volumes in 1997 were low, rated as 2,360 ADTs for the segment of 119th south of Pawnee. Volumes are predicted to increase to approximately 9,000 by 2030. The 2030 Transportation Plan shows 119th being widened north of Pawnee to Maple from two lanes to four lanes; this improvement is not included in the C.I.P. for 2000-2009. South of Pawnee, it remains a two-lane facility.

City water and sewer services are not available west of 119th at the current time. The nearest water line is 16" line that is 1/4 mile east of Pawnee and 119th. The nearest sewer mains that could possibly be extended are a 12" main that is 1 1/2 miles east of Pawnee and 119th, or a 12" main that is 1/2 mile north and 1/3 mile east of Pawnee and 119th.

CONFORMANCE TO PLANS/POLICIES: The "Wichita Land Use Guide" in the 1999 Update to the Wichita-Sedgwick County Comprehensive Plan identifies this area as appropriate for low-density residential use, and places it beyond the 10 Year Urban Service Area, but within the 30 Year Urban Service Area. The area to the north, east, and west of the application area is shown for low-density residential also. The area to the south is identified as remaining in rural use. No land is shown along 119th as industrial except over a mile to the north between Kellogg and the abandoned right-of-way of the Kansas Central Railroad, and over 1 1/2 mile to the south between MacArthur and K-42.

RECOMMENDATION: This area is expected to transition from rural to urban use within 10 to 30 years. The transition to urban development is expected to follow the pattern of low-density residential use, as indicated in the Comprehensive Plan.

In general, construction sales and service does not blend well with residential use. Typical operations have a lot of heavy equipment (noise), rely on outdoor storage of equipment and supplies, and require a large amount of land, making adequate screening and buffering expensive. However, it is permitted as a rural home occupation if the applicant can meet all the criteria of Sec. IV-E.6-7 of the Unified Zoning Code. In situations where the applicant cannot meet all these criteria but has a minimum of 5 acres and no more than four employees, it can be approved as a "Conditional Use".

In this case, the landscape business has already been established. Continued operation in the short run is somewhat in character with the rural land use nearby. As the area transitions to urban use, and the nearest residential areas are only 1/2 mile away, the business could become a deterrent to the development of surrounding areas. Therefore, it is recommended that the use be allowed to continue as long as it operates as a home occupation during the next 10 years and that the extent of the use is not expanded beyond its current level. This allows the applicant to continue operation and time to plan for expansion in a location suitable for industrial use.

The criteria for rural home occupations contained in the Unified Zoning Code can be modified by MAPC, however, the code gives parameters that can be used to judge whether the proposed home occupation truly meets the spirit and intent of the rural home occupation standards, or is being used as a vehicle to circumvent the UZC. In this case, the Site Plan violates the scope and intensity of the rural home occupation in many respects.

Because the Site Plan was just received, Staff has not had time to discuss it with the applicant. However, the Site Plan, as submitted, would allow for a significant expansion of the existing indoor and outdoor storage and change the character of the operation.

The applicant is requesting a doubling or tripling of the indoor building area, to a maximum amount somewhere in the vicinity of 14,000 square feet. Yet, the maximum amount of indoor storage envisioned by the UZC is 3,000 square feet or in an accessory structure equal to the size of the principal residence. We do not know the exact size of the principal residence, but from building permit data it appears to be approximately 1,000 to 1,500 square feet. Staff recommends the proposed building expansion be eliminated and that the existing space be limited to 3,000 square feet devoted to the home occupation. The remaining space would be the residence and used for agricultural activities.

The applicant is requesting nearly 8 times as much outdoor storage as the Unified Zoning Code allows for outdoor storage. The plan shows between 80,000 and 85,000 square feet and the UZC limit is 10,000. In addition, the location of the outdoor storage is nearer to 119th and the southern property line than the 200 feet stipulated in the UZC, although the Site Plan could accommodate this 200-foot buffer simply by moving the outdoor storage area back by about 25 feet on the east.

Whenever outdoor storage is less than 600 feet from the right-of-way or interior property line, the screening standards in the UZC require solid, semi-solid fencing and/or landscape materials that provide the desired screening effect with the first growing season following installation. The Site Plan fails to provide this level of screening. It only provides for a tree buffer of one tree every 40 feet, with no stipulation as to type or caliper.

Finally, the current operation has very little outdoor storage, perhaps in the range of 5,000 square feet based on a recent site visit. Allowing the change from the current level of outdoor storage to that requested by the applicant is a serious change in character of the operation.

Clearly, the proposed "Conditional Use" seriously challenges the spirit and intent of the UZC by the proposed expansions of the indoor and outdoor storage, as well as by the minimal screening proposed. Based on this Site Plan and information available prior to the public hearing, Staff recommends the application be APPROVED subject to a revised Site Plan that meets the following conditions:

1. The "Conditional Use" for operation of a contractor's storage facility shall meet all requirements of the Unified Zoning Code Sec. IV-E.(3)(a), Sec. IV-E.(3)(c), Sec. IV-E.(3)(g), Sec. IV-E.(6)(e), and Sec. IV-E.(6)(g).
2. The revised Site Plan shall designate those portions of existing structures used as the principal residence and as accessory structures for agricultural use.
3. The rural home occupation shall be limited to the use of existing structures or portions thereof, and to the maximum amounts specified in Sec. IV-E.(6)(c).
4. Outdoor storage for the rural home occupation shall be located no closer than 200 feet from the property line abutting 119th Street West on the gravel drive and in the area west of the main building and north of the pole barn. The outdoor storage shall be screened and/or landscaped in compliance with Sec. IV-E.(6)(d) and with a maximum size of 10,000 square feet.
5. The distance required between the rural home occupation and the adjacent dwelling wherein no rural home occupation is conducted may be reduced from 600 feet to 500 feet.
6. Any materials that could potentially contaminate the groundwater or surface water shall be stored in such a manner as approved by the Environmental Health Division of the Health Department.
7. The site shall be developed in general conformance with a revised site plan to be reviewed and approved by the Director of Planning and that is in substantial conformance with all the conditions contained herein.
8. Any violation of these conditions shall render this Conditional Use Permit null and void.
9. The "Conditional Use" permit shall terminate after a period of 10 years from date of approval. If the owner seeks to renew the rural home occupation at the termination of this 10-year period, the owner shall file an application for a "Conditional Use" permit and be subject to the public hearing process.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The land in the immediate vicinity of the property is used for agricultural purposes. The character of urban development on the eastern side of 119th to the north of the

application area is low-density residential. The only non-residential use being developed nearby is a church, which is a permitted use in all residential zoning districts. The property to the west is located in the Calfskin Creek floodplain. The land to the west of the Calfskin along 135th Street West, the next major county line road, 135th Street West, is in agricultural use with a few large-lot residential uses.

2. The suitability of the subject property for the uses to which it has been restricted: The property could be used as agricultural land or in low-density residential use. The landscape contractor's business can only be operated as a "Conditional Use" for a rural home occupation since the applicant has less than 20 acres.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The "Conditional Use" for a rural home occupation would allow the continued operation of the landscape contractor's business for up to ten years and so long as it complies with the conditions of approval and is maintained as a residence. Any expansion of these uses would hamper the viability of the residential character in surrounding areas since the activities conducted upon the site are incompatible with low-density residential use.
4. The length of time the subject property has remained vacant as zoned: The property has been in agricultural use and more recently has been in operation as a landscape construction business even though it was not zoned for this type of business.
5. The relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: Any expansion of the business is at the expense of the general public by compromising the proposed development pattern and the infrastructure being planned to serve future residential growth. The "Conditional Use" gives the applicant the ability to plan for business expansion in a suitable industrial site, thus reducing any loss to the applicant.
6. Conformance of the requested change to the adopted or recognized Comprehensive Plan: A landscape contractor's business is not in conformance with the Comprehensive Plan.
7. Impact of the proposed development on community facilities: Traffic impact should be minimal. Sewage impacts would be minimal if adhering to a criterion of domestic water level generation and proper drainage/floodplain management. However, greater consumption of water would require extension of sewer lines to serve the site.

GOLTRY "This is a request for a Conditional Use for a rural home occupation on an 18 acre tract of land, located on the west side of 119th Street West, approximately one-fourth mile south of Pawnee. This is also a case that we have heard previously as a requested zone case to 'LI'. That was eventually withdrawn by the applicant.

The area in question is an area that is perhaps on the verge of urban expansion within the next 10 or so years. It is an area that is served by access to the property via 119th Street West. It is an area where, although water and sewer are not already at the site, they are fairly nearby and expected to come within the near distant future. It is shown on the Comprehensive Plan for low-density residential use. It is placed beyond the 10-year service boundary but within the thirty year service area. The areas to the north, east, and west are also shown for low-density residential use in the future.

In the form of recommendations, we expect this area to transition to urban use and we expect it to transition to residential use. In general, the requested type of rural home occupation, that of a landscape contractor's construction business is not compatible with residential use for a number of reasons: Use of heavy equipment, use of outdoor storage of equipment and supplies requiring large amounts of land. However, in this case, as you will see from the slides, the existing operation that is being conducted by Mr. Girrens is a very clean operation and were this operation to be maintained at the scale at which it is operating today or in that range of size, it would be an operation that would be in character with operation of rural home occupation until which time as the area transitions to urban use.

There are some evergreen trees to the back of the site for screening. There is a residence on the north. There are large tracts of undeveloped property to the east. There is an area that is relatively near to 119th Street that was shown on the site plan that was submitted to us to be used for outdoor storage. This would be moving the outdoor storage from where it is currently located, well-screened and a ways back from the street to much closer to 119th Street. As a point of reference, what outdoor storage occurs on the site right now is very limited. In fact, we have the one truck parked here (indicating) and a close-up shows a few other pieces of equipment slightly buried in the snow, but not a lot of outdoor storage. They do store most of their equipment inside the building. Overall, a clean looking operation.

Staff recommendations are given on pages 4 and 5. Staff is recommending that yes, this be approved as a Conditional Use for a rural home occupation with a time-frame for 10 years, which corresponds to the expected time of transition. At the end of 10 years, they could either seek to have it renewed, and in the event that we are wrong and it still is a rural area, it could continue to be renewed to operate that way. Or, if we are correct, that this probably will be transitioning, then probably everyone would be happier with seeing it transition to residential use.

We are not recommending approval of the site plan as submitted by the applicant because it represents a great increase in the scope of this activity, transitioning it from the character of a rural home occupation to the character of an industrial type use. It shows the location of a new 10,000 square foot structure, located near to 119th Street. It goes from having a very minimal amount of outdoor storage to showing 85,000 square feet of open storage. For that reason, we recommend

approval, subject to staff comments and subject to a revised site plan that recognizes the scope and character of the existing operation. I will stand for questions."

CARRAHER "Are there questions of staff regarding this item?"

MCKAY "Donna, if he builds this 10,000 square foot building and puts farm equipment in it, does that make any difference?"

GOLTRY "He can do that."

MCKAY "Okay, thank you."

CARRAHER "Are there any further questions of staff? Thank you, Ms. Goltry. Now, we will hear from the applicant."

KIM EDGINGTON "Thank you, Mr. Chair, members of the Commission. I am with Austin Miller, representing the applicant again. I would just like to go down through some of staff's comments and kind of refresh everybody. We are anxious to wrap this case up. It seems like it has drawn out far too long."

The first condition that staff has recommended we have no problems with. The same with the second. We would be glad to designate which portions are used as a residence. However, the third condition we would like to discuss, given the fact that the two existing structures on this site are used for the applicant's farming business. Any additional building that would be built would be for this contractor's storage yard, in order to maintain some separation between those two uses, since this is still an active farm.

That is what we have depicted on the site plan that we have shown you. The reason that that building is situated where it is upon that lot is due to a lot of the flooding conditions on Mr. Girren's property and where the flood plain lies within this property.

Regarding Condition No. 4, we can adjust that to keep that at least 200 feet from the property line abutting 119th Street. That is not a problem. However, moving it to the west and north of the main buildings and the pole barn again puts that into flood plain area. We do agree to screen and landscape any outdoor storage. As you can see from the slides, Mr. Girrens has already begun the process of planing extensive evergreen landscaping barriers. The maximum size of 10,000 square feet, we do have a problem with, given the types of equipment that Mr. Girrens works with. These are very large pieces of machinery and once they start filling up space, that 10,000 goes very quickly.

Down to Condition No. 5--we agree with it. We agree with No. 6, 7, and 8. No. 9, we would like to discuss, given the fact of the constraints that that puts upon Mr. Girrens' ability to grow this business and how a 10-year limitation puts a big question mark in the mind of how he is going to operate that business. As far as what type of investments, as far as time and money, he will make in that business, we would ask that we consider removing that recommendation. I would be glad to answer any questions. I have a feeling this is more going to be a matter of what works best for everyone."

CARRAHER "Before I yield the floor for questions, it has been requested by Mr. Krout that I ask for any ex parte contacts. Seeing none, I will yield the floor for questions."

PLATT "This Conditional Use is being asked for for a rural home occupation. Are you comfortable with the fact that this is a rural home occupation as opposed to an industrial business that is just starting?"

EDGINGTON "I am comfortable with that, given the fact that I don't think that Mr. Girrens intends to add numerous employees to the staff. However, the type of work that he does does require some large machinery. On a little bit different note from what staff has commented about the use of outdoor equipment on this site, the outdoor equipment is not used on this site. Mr. Girrens is not digging holes and moving things around; however, he is storing this construction equipment on the site, which he then transports to job sites and uses it there."

CARRAHER "Any further questions of the applicant?"

KROUT "Can you identify where the flood plain is on the site plan that is up on the screen? You said that you couldn't put constraints on building because some of it was in the flood plain. I guess I am also wondering if any of the outside storage that is being proposed now is in the flood plain."

EDGINGTON "It is. That is something that we would be glad to discuss removing part of that area from what is shown on the site plan as outdoor storage. Mr. Girrens has informed me that this entire area back here (indicating) floods, so it is not necessarily conducive to outdoor storage. He is using this area right here (indicating) for outdoor storage now. As you can see, that is very well screened. Over this portion of the property, from the back line of this building right here and west of there does also flood. Therefore that limits the area that he will, in fact, be able to use for outdoor storage and to build any other building. It is to approximately this location here" (indicating).

KROUT "Can you describe what materials and/or equipment would be in the outside storage areas and in the 10,000 square foot building. And if you disagree with the 10,000 square feet of outside storage, then can you tell us what you are asking for?"

EDGINGTON "Let me try to break those questions up. Right now, and again, Mr. Girrens is using his barns for some of the storage of his construction landscape equipment. That is, therefore, moving some of his farming equipment outdoors. So in that case, what he would like to do is have the ability to use this building strictly for the construction equipment and go back to using his barns for what they were meant to be used for, for his combines and other farm equipment.

However, there is a lot of trailers that once that equipment is off-loaded that the outdoor storage will be used for. Some of that equipment is even too large, depending on how he builds that building, to place within a building. I appreciate Commissioner McKay's comment that if Mr. Girrens were to go out there right now and build that 10,000 square foot building for a barn, he would be allowed to do so with no questions asked. And he would also be allowed to use this entirely, subject to Health Department concerns, aesthetics that his neighbors would complain about or comment on, also for his farming activity."

MICHAELIS "Ms. Edgington, there are a couple of things I want to clarify. When you said flood plain, are we talking about a flood plain as designated, or an area that he knows that floods on occasion."

EDGINGTON "As far as I know, the actual designated Flood Plain is within this area. The line lies here. (Indicating) You can see that this is a pond, but that line does cut across this part of his property (indicating), along in here."

MICHAELIS "Okay. And then the other thing is just a comment. I know we are trying to tie this outdoor storage down to a certain footage. Here again, I don't know how much micro-management we could do, but I would just like to remind my fellow Commissioners that we sit here and approve outdoor storage at every Dillons, every Wal-Mart that comes in and asks for it; at Central and Rock Road and everywhere else, and it exceeds 10,000. So 10,000 square feet is not very much. I don't know if it is appropriate to put it a number on it. It is another one of those things where are we going to have to state the corners....who is going to go out there and measure it? The other thing that is obvious here...and I have been out there and looked at that when there wasn't snow on the ground, and it is a very well kept piece of property. He obviously takes a lot of pride in his equipment and his operation. I have to feel that he is going to be his best judge of where he puts it and how he maintains it."

CARRAHER "Are there any further questions of the applicant?"

WARREN "Items 3 and 9 on the staff comments, one says he can't build any more buildings. I think that is in No. 3. He is limited to what he now has and can't build any more. Is that correct?"

KROUT "I think we didn't understand that because he was using a farm building for his contractor storage and that had forced his agricultural equipment to be outside."

GOLTRY "I think probably I should show you the slides again instead of responding to this. There just isn't much equipment stored outside that was visible from the site inspection."

KROUT "I guess there is not an evidence of what the applicant's agent indicated."

GOLTRY "Here is a close-up. This is what was stored outside that I could see that day."

WARREN "Do I understand not that maybe the staff would be willing to delete the requirement in Item No. 3?"

KROUT "No."

WARREN "Well, I guess, along those lines, as Commissioner McKay said, the man could go out there and build an agricultural building of 10,000 square foot with no questions asked. Right now, he is using some of his existing buildings for things that are non-agricultural and he is trying to get them back to agricultural. If he, now, can go out there and build a 10,000 square foot building without coming to us, I don't know why we would care what he puts in that building."

KROUT "Because the County Commission has adopted a plan encourages the preservation of agriculture, not the encouragement of contractor storage yards in rural areas."

WARREN "That may be true, but as a follow-up, most of you have been out to my farm, and I have a man who is in agriculture 100%. He has three semi trucks parked outside. He has about 5 huge trailers, and he has combines. He has more than this is even projected, and it is completely legal because it is under the umbrella under agriculture."

PLATT "Mr. Chair, are we in the discussion phase of this item?"

CARRAHER "That is correct. There is a point of order, yes. Let's limit it to questions right now. Thank you, Dr. Platt, your point is well taken. Mr. Warren, did you have a question you wanted to ask?"

WARREN "I think I got it clear. Staff is not willing to give up Item No. 3."

JOHNSON "I am still confused with this. It has been in front of us--if staff is not in favor of an additional structure there, is what he is doing there today non-conforming and required to be in here?"

Mr. Krout shook his head.

JOHNSON "Okay."

HENTZEN "In follow-up with Mr. Johnson's question, is it necessary to approve a Conditional Use, or is it necessary to approve a home occupation? I think that is what the application is--a rural home occupation. Do those things come before us, or the County Commission?"

KROUT "If this owner was meeting all of the conditions that are in the Code for a rural home occupation that would include contractor storage, which would limit the size of outside storage, would limit the size of buildings, would require at least 20 acres and would require more distance to the next property lines, then he would be able to do this by right. Because he doesn't meet any of those conditions, there is still an option for them to come, as a Conditional Use, and for you to approve the rural home occupation, subject to whatever conditions you think are appropriate."

CARRAHER "Are there any further questions for the applicant? Seeing none, thank you, Ms. Edgington. We will now move it to the gallery. Is there anyone in the gallery who wishes to speak in favor of the item? Is there anyone who wishes to speak in opposition?"

MARK BIBERSTEIN "I will try to speed this up because it is getting so late. I am an attorney with Foulston and Siefkin here in Wichita. My professional address is 700 Bank of America Building, Wichita, KS 67202. I appear here on behalf of Louise Jacobs. She owns the quarter immediately to the east of the subject property."

Let me tell you from the beginning that my client does not have a problem with Mr. Girrens doing a side business of landscaping or having some limited equipment out. She never has had a problem with that. That has not been our issue. But the concern here is that this land, the character of it is changing. You have a Comprehensive Plan that identifies this land as going to low density residential in between 10 and 30 years. I will submit to you that that is probably too long in the future. Ms. Jacobs has been approached already by two different people about purchasing her land for development purposes--for residential purposes. So I think 10 years is too optimistic. If I have any objection at all with the staff's recommendation, it is that the 10-year number is used as opposed to something smaller.

As I said, Ms. Jacobs does not have a problem with Mr. Girrens continuing a side business, but what I think we have seen all along is an attempt to ask for so much to get this property entrenched into more of an industrial type use to the point that it frustrates any attempt, later, to go ahead and comply with the plan and get it back to low density residential. As you will recall, we were here initially on a Light Industrial zoning change, and then a General Commercial. Now, the staff has recommended what we agree with, other than perhaps the 10-year date, and they want to change the requirements.

One thing I want to do is to read to you from the minutes of the last meeting where I appeared and that was in May of this last year. The topic of conversation was Mr. Girrens' plans. Mr. Michaelis asked 'Mr. Girrens, can you tell me, I think Kim alluded to the fact that you own a back hoe, basically and a skid loader, and that is currently what you use. Is that what your continued use is, and you don't see this expanding any beyond that? You don't see 20 back hoes and skid loaders'. The answer by Mr. Girrens was 'no, I am a one-man operation. I don't, as far as the Workmen's Comp and stuff like that, I just work myself. I keep myself busy'.

Now what the staff has recommended, and they can correct me if I am wrong, but it allows Mr. Girrens to have himself work in this business and also to have 4 additional employees. It also allows him a certain amount of space of storage of space inside a structure and 10,000 square feet outside. Now, as far as the growth, one of two things are going to happen. One is that Mr. Girrens doesn't grow as he indicated at the last meeting, and if that is the case and he has sufficient room with his inside storage and his outside storage, 10,000 square feet is enough for a skid loader and a back hoe and more.

The second thing that can happen is that he could either by design, or just by chance, have his business expand. If that is the case, he does have room for growth, we think, even with the staff's recommendation. But let's say that the business does so well that it expands beyond what is provided by the staff. I would say two things to that. First, I would say to Mr. Girrens, 'congratulations. Your business has expanded beyond expectations. It is a goin' Jesse--you are doing well. But now that you have a business that is a business, a landscaping business, you need to move it to a more appropriate area'.

The second thing I would say is to the MAPC 'congratulations to you as well, you have done your job. Consistent with your Comprehensive land use and common sense, you don't want to mix industrial/commercial, and residential'. As I told you when I was here last time, you don't have to look very far in the casebooks that you have a problem when you mix the two.

And on the 10 issue. I really want to speak to this. There are two possibilities there as well. The first is that we are wrong. I don't think we are, particularly with the fact that Ms. Jacobs has already been approached. But if we are wrong, in 10 years, Mr. Girrens could come back and ask, and if we are wrong, the MAPC, in its wisdom, I would imagine will allow him to continue. But if we are right, again, to Mr. Girrens, I say 'congratulations. Your land is now worth a premium as development land for residential, and with that money, you can move out and put your business with other businesses where it is suited'.

CARRAHER "I would like to open the floor to give the speaker an additional 2 minutes."

MOTION: That the speaker's time be extended two minutes.

WARNER moved, **BARFIELD** seconded the motion, and it carried unanimously (12-0).

BIBERSTEIN "Thank you very much. I will do my best not to use it all. There was a question about 80,000 square feet. This again, comes back to the attempt to get so entrenched into having a business there that it makes it harder to move later. With the recommendation for the inside storage and the outside storage, we agree with the staff recommendations. Also, on the additional screening, we agree that that should be required. The only thing that we would disagree with is the time frame, and that is for the reasons I have stated. I would be more than happy to answer any questions you may have."

CARRAHER "Are there any questions of the speaker?"

GAROFALO "What would you recommend as a time-frame?"

BIBERSTEIN "Five years."

CARRAHER "Are there any further questions of the speaker? Seeing none, thank you, Mr. Biberstein. Is there anyone else in the gallery who wishes to speak in opposition to this item?"

LOUIS SITTler "My address is 24912 West 6th Street South, Garden Plain, Kansas. I am speaking on behalf of my wife, Lorraine Settler. She owns the 80-acre tract on the east side of 119th Street that corners to the southeast with the tract under discussion. We are not opposed to the staff recommendations for approval, subject to the revised site plan that meets the conditions listed on Pages 5 and 6 of the staff report, dated December 21, 1000. Thank you."

CARRAHER "Are there any questions of the speaker? Thank you, Mr. Sittler. Is there anyone else in the gallery who wishes to speak in opposition to the item? Ms. Edgington, you have two minutes for rebuttal if you so choose."

EDGINGTON "Thank you, Mr. Chair. I would just like to address a couple of issues briefly. I think we are all aware that our Zoning Code has provisions written into it that protect the mixture of land uses which occurs all over the city. These protections work very effectively in the form of landscaping screening that we are more than willing to comply with on this site. There are clear examples of uses very similar to this one that co-exist effectively and throughout the city. Unfortunately, none of us can read the future, but we are faced with the fact that Mr. Girrens is operating two types of businesses on this parcel. Two types of businesses that are somewhat space intensive in terms of equipment; however we feel that the recommendations that staff has placed upon their recommendation does nothing but limit Mr. Girrens to his exact configuration with no room for growth for either his agricultural or his contractor storage business. Given that if the contract for storage equipment is stored in the barns, that does take up space that he could otherwise use for his agricultural equipment."

So staff's recommendations are rather limiting as to what Mr. Girrens can do to this property. Again, we will agree to limiting some of that outdoor storage, given the fact that it is not usable because of flooding issues in there; however, 80,000 feet, given the type of uses that are occurring here is not an unreasonable figure. So, again, we would ask that you look again at the site plan that we have submitted. We would be willing to limit some of those sizes of outdoor storage. I would be glad to answer any questions that you might have."

CARRAHER "Are there any questions of the applicant? Thank you, Ms. Edgington. We will move it back to the Commission."

BARFIELD "I have a question for the attorney. Can you tell me, how much property does your client own?"

BIBERSTEIN "A quarter. That's 160 acres."

BARFIELD "Okay."

CARRAHER "While we have Mr. Biberstein up here, does anybody else have any questions for him? Thank you, sir. Are there any questions or commentary from the Commission? What is the pleasure of the Commission?"

MOTION: Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: The land in the immediate vicinity of the property is used for agricultural purposes. The character of urban development on the eastern side of 119th to the north of the application area is low-density residential. The only non-residential use being developed nearby is a church, which is a permitted use in all residential zoning districts. The property to the west is located in the Calfskin Creek floodplain. The land to the west of the Calfskin along 135th Street West, the next major county line road, 135th Street West, is in agricultural use with a few large-lot residential uses. The suitability of the subject property for the uses to which it has been restricted: The property could be used as agricultural land or in low-density residential use. The landscape contractor's business can only be operated as a "Conditional Use"

for a rural home occupation since the applicant has less than 20 acres. Extent to which removal of the restrictions will detrimentally affect nearby property: The "Conditional Use" for a rural home occupation would allow the continued operation of the landscape contractor's business for up to ten years and so long as it complies with the conditions of approval and is maintained as a residence. Any expansion of these uses would hamper the viability of the residential character in surrounding areas since the activities conducted upon the site are incompatible with low-density residential use. The length of time the subject property has remained vacant as zoned: The property has been in agricultural use and more recently has been in operation as a landscape construction business even though it was not zoned for this type of business. The relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: Any expansion of the business is at the expense of the general public by compromising the proposed development pattern and the infrastructure being planned to serve future residential growth. The "Conditional Use" gives the applicant the ability to plan for business expansion in a suitable industrial site, thus reducing any loss to the applicant. Conformance of the requested change to the adopted or recognized Comprehensive Plan: A landscape contractor's business is not in conformance with the Comprehensive Plan. Impact of the proposed development on community facilities: Traffic impact should be minimal. Sewage impacts would be minimal if adhering to a criterion of domestic water level generation and proper drainage/floodplain management. However, greater consumption of water would require extension of sewer lines to serve the site.) I move that we recommend to the governing body that the request be approved, subject to the following:

1. The "Conditional Use" for operation of a contractor's storage facility shall meet all requirements of the Unified Zoning Code Sec. IV-E.(3)(a), Sec. IV-E.(3)(c), Sec. IV-E.(3)(g), Sec. IV-E.(6)(e), and Sec. IV-E.(6)(g).
2. The revised Site Plan shall designate those portions of existing structures used as the principal residence and as accessory structures for agricultural use.
3. The rural home occupation shall be limited to the use of existing structures or portions thereof, and to the maximum amounts specified in Sec. IV-E.(6)(c) plus one additional 10,000 square foot building.
4. Outdoor storage for the rural home occupation shall be located no closer than 200 feet from the property line abutting 119th Street West on the gravel drive and in the area west of the main building and north of the pole barn. The outdoor storage shall be screened and/or landscaped in compliance with Sec. IV-E.(6)(d) and with a maximum size of 10,000 square feet.
5. The distance required between the rural home occupation and the adjacent dwelling wherein no rural home occupation is conducted may be reduced from 600 feet to 500 feet.
6. Any materials that could potentially contaminate the groundwater or surface water shall be stored in such as a manner as approved by the Environmental Health Division of the Health Department.
7. The site shall be developed in general conformance with a revised site plan to be reviewed and approved by the Director of Planning and that is in substantial conformance with all the conditions contained herein.
8. Any violation of these conditions shall render this Conditional Use Permit null and void.
9. The "Conditional Use" permit shall terminate after a period of 10 years from date of approval. If the owner seeks to renew the rural home occupation at the termination of this 10-year period, the owner shall file an application for a "Conditional Use" permit and be subject to the public hearing process.

GAROFALO moved.

MCKAY "Let me understand this. You are saying to approve it subject to staff comments, allowing a 10,000 square foot building additionally to be put on the property."

GAROFALO "If he thinks that is necessary."

KROUT "That is limited, then, to the 10,000 square feet of outside storage?"

GAROFALO "Yeah."

JOHNSON "Marvin, could you repeat what you just said. Would it have 10,000 square feet of outside storage, plus the building?"

KROUT "Plus a 10,000 square foot building."

WARNER seconded the motion.

CARRAHER "Are there any questions or commentary to the motion on the floor?"

PLATT "I may support the motion, but I am a little reluctant to. It seems to me that what we are hearing today is right back where we were when the application was for Industrial zoning. This is a 'foot-in-the-door' type movement, where when you get a foot in. All we heard from the applicant was about growth and a growing business. That doesn't at all seem to me to fit a home occupation under any criteria. I can see nothing but trouble down the road.

I would be more inclined to simply support the staff recommendations, but limit it to 5 years and then require the renewal then. Because that would give us a chance to review what is going on here sooner because otherwise, it isn't going to get much review. It is going to be there, and if we are indeed seeing the beginning of a big industrial activity in 10 years, it is going to probably be something you can't control. I would like to hear what other people have to say. I am a little bit inclined not to support the motion."

MICHAELIS "My comments are going to sound a little redundant, but I think it is absolutely insane that we can grant outdoor storage in the middle of our town equal to what we are granting out in a rural area. I just think that makes no sense at all. If it remains an agricultural use, he has unlimited outdoor storage. He can go out there and build a building. We are trying to penalize this person for coming in and trying to do things the right way. He could continue to operate the way he is, probably go on. He hasn't bothered anybody, it has been fine the way it is. There are probably tons of these kinds of uses around town, but I still think that the 10,000 square foot limitation on outdoor storage is unnecessary and in contrast to what Mr. Platt had indicated, I really feel strongly that at least the building ought to be offered. Otherwise, he is not gaining, he is losing."

CARRAHER "Are there further questions or commentary? Let's move into a voice vote."

VOTE ON THE MOTION: The motion carried with 11 votes in favor.
(Michaelis, Carraher, McKay, Warren, Warner, Hentzen, Johnson, Barfield, Garofalo, Marnell and Lopez). Platt opposed.

KROUT "As opposed to the Industrial zoning, this is a Conditional Use, so the Planning Commission's action is final unless there are protests within 14 days, in which case it will go on to the County Commission and the protests can count towards the voting requirement for the County Commission, depending on how much there is."

11. **Request for the Planning Commission to call a hearing to determine the proper zoning for property located at the northeast corner of 45th Street North and Rock Road.**

CARRAHER "To whom should I yield the floor. Mr. Miller?"

MILLER "Commissioners, if you remember back, there was a request for 'MF' zoning at about the half-mile line east of Rock Road on 45th, and then there is a plat that has gone through. Sawmill Creek, if you remember the name. There is currently a platted lot that is proposed there that would be about 300-foot square. This site has the old 600 x 600 'LC' zoning on it and the property north of that 300-foot line that they are proposing for commercial use today is being shown as single-family lots. The property owner hadn't made any provision for private covenants for preventing those lots from being used for commercial purposes at some point in the future.

We have talked to them, they are willing to have you all call for a hearing to see whether the 'LC' zoning is the appropriate zoning, and if you find that it is not, then down zone it to single-family or whatever you think is appropriate there, but it is platted as single-family lots and it probably isn't appropriate as 'LC' Limited Commercial.

We just need for you, if you are willing, to have staff go through the process to bring this for you to review and see whether 'LC' is appropriate or not."

CARRAHER "Are there any questions for Mr. Miller regarding this?"

WARREN "Did you say that the owner of the property is requesting this?"

MILLER "He is agreeable to it. He doesn't have to pay for anything by you all doing it this way and us doing it with an ownership list."

WARREN "So he isn't opposed to this coming up to this kind of a review?"

MILLER "Right."

MICHAELIS "Just to make sure, what we have platted on the plat right now is a 300 x 300 square?"

MILLER "Approximately."

MICHAELIS "And we are wanting to go to a 600 x 600"

MILLER "Well, no. Right now, he has 600 x 600 'LC' zoning, but he is only using the 300 x 300. So he has single-family lots that would be in that 300 to 600 foot range."

MICHAELIS "In the 'LC' zoning?"

MILLER "Yes."

MICHAELIS "Do we have to do that, or can that be a condition that they just use a lesser use in there?"

MILLER "Okay, without down zoning it, they don't have any intention at this point of doing any covenants, so it would just be there."

KROUT "The plat has been approved by the City Council. It was our omission in not picking this up initially. Normally we would have asked, as a condition of approval, for the property owner to down zone the property. We have done that in other cases, to an appropriate category. But in this case, because we overlooked it, we are willing to pick up the cost of what would otherwise be the filing fee and the notice list."

WARREN "And he has no opposition?"

KROUT "He has no opposition."

CARRAHER "Do we have a specific date in mind for the hearing?"

KROUT "We'll just set it up."

MOTION: That the Planning Commission call a hearing to determine the proper zoning for the property.

WARREN moved, **MCKAY** seconded the motion.

VOTE ON THE MOTION: The motion carried unanimously with 12 votes in favor.

12. Other Matters

CARRAHER "Are there any other matters?"

KROUT "On January 4, we have a special meeting. There will be no zoning or Subdivision items that I know of, but we do have a public hearing on the Delano Neighborhood Plan. You are required to determine whether or not the proposed Municipal Improvement District for the downtown is consistent with the Comprehensive Plan, and there may be some other miscellaneous items."

MCKAY "Are we going to get an opportunity to have that to really review it before then?"

KROUT "The Delano Plan will be sent out to you. We will send out a copy of the Plan to you."

MCKAY "Well, do it in plenty of time. I read slow."

KROUT "Okay."

CARRAHER "Are there any other matters? Before we close, just a few things. First of all, at the last meeting, I think some of you caught this. I had accidentally referred to our assistant, Ms. Wolf as Ms. Young. I believe that is in the record. I was reminded of that via several E-mails. My sincere apologies.

Second, since this is nearly the end of the year, colleagues and staff, for the wonderful job they have done. I know that sometimes we have had our ups and downs, but every meeting, I just love the experience more, and I hope you all do, too. In closing, since this is the magical time of the year, I want to make sure I cover every group here. I want to wish everybody a Merry Christmas, Happy Hanukkah, Happy Kwanza, Feliz Navidad, and Happy Ramadan. With that in mind, I would like open the floor for a motion of adjournment."

MOTION: That the Metropolitan Area Planning Commission adjourn.

BARFIELD moved, **MCKAY** second the motion, and it carried unanimously.

The meeting formally adjourned at 5:30 p.m.

State of Kansas)
Sedgwick County) ^{ss}

I, Marvin S. Krout, Secretary of the Wichita-Sedgwick County Metropolitan Area Planning Commission, do hereby certify that the foregoing copy of the minutes of the meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission, held on _____, is a true and correct copy of the minutes officially approved by such Commission.

Given under my hand and official seal this _____ day of _____, 2001.

Marvin S. Krout, Secretary
Wichita-Sedgwick County Metropolitan
Area Planning Commission

(SEAL)